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IN THE

Supreme Court of the United States

OCTOBER TERM, 1992

LOCAL 1814, INTERNATIONAL LONGSHOREMEN'S ASSOCIATION, AFL-CIO,

Petitioner,

VS.

NEW YORK SHIPPING ASSOCIATION, INC. and UNITED STATES OF AMERICA,

Respondents.

ON PETITION FOR A WRIT OF CERTIORARI TO THE UNITED STATES COURT OF APPEALS FOR THE SECOND CIRCUIT

PETITION FOR A WRIT OF CERTIORARI

THOMAS W. GLEASON
Attorney for Petitioner
26 Broadway - 17th Floor
New York, New York 10004
(212) 425-3240

Of Counsel:
ERNEST L. MATHEWS, JR.
KEVIN MARRINAN
MAURA R. CAHILL

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QUESTIONS PRESENTED

This case, in which the court of appeals upheld an injunction prohibiting a union and its members' employers from continuing with arbitration over breach of their collective bargaining agreement, gives rise to the following questions:

1. Are the Norris-LaGuardia Act, 29 U.S.C. § 101, which deprives federal courts of jurisdiction to grant injunctions in cases involving or arising out of labor disputes, and the national labor policy favoring arbitration superseded by the general grant of equity powers in the Racketeer Influenced and Corrupt Organizations Act, 18 U.S.C. § 1964(a)?

2. May a federal court disregard the Norris-LaGuardia prohibiton against injunctions in cases involving or arising out of labor disputes to accommodate

   (a) the general purposes or governmental interest embodied in another, non-labor statute, or

   (b) the express provisions of another, non-labor statute?

3. Where Congress has not expressly legislated an exception to the Norris-LaGuardia Act, does the All Writs Act, 28 U.S.C. § 1651, empower a district court, in order to further the policies of another federal statute, to grant injunctive relief, which would otherwise be barred by the Norris-LaGuardia Act?

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ON PETITION FOR A WRIT OF CERTIORARI TO THE UNITED STATES COURT OF APPEALS FOR THE SECOND CIRCUIT

PETITION FOR A WRIT OF CERTIORARI

Local 1814 of the International Longshoremen's Association, AFL-CIO, hereby petitions for a writ of certiorari to review the decision of the United States Court of Appeals for the Second Circuit in this case.

Opinions Below

The opinion of the court of appeals, not yet reported, is reproduced in the appendix to this petition (App. at A-1 - A-34). The opinion of the United States District Court for the Southern District of New York, which granted an injunction against a labor arbitration, was rendered orally from the bench and is also not reported. However, the pertinent portions of the district court's opinion are reproduced in the opinion of the court of appeals at App. at A-12 - A-16.

Jurisdiction

The judgment of the court of appeals was entered on June 1, 1992. This petition is filed within 90 days of that date. The jurisdiction of this Court is invoked pursuant to 28 U.S.C. § 1254(1).

Statutes Involved

This case concerns certain sections of the Norris-LaGuardia Act, 29 U.S.C. §§ 104 and 113, the Racketeer Influenced and Corrupt Organizations Act, 18 U.S.C. §§ 1961, 1962 and 1964, and the All Writs Act, 28 U.S.C. § 1651. These statutory provisions are reproduced in App. B at B-1 - B-9.

Statement

A. The Norris-LaGuardia Act

In 1932 Congress passed the Norris-LaGuardia Act ("NLGA"), 29 U.S.C. §§ 101, *et seq.*, the heart of which is to deprive federal courts of jurisdiction to issue injunctions "in any case involving or growing out of a labor dispute." 29 U.S.C. § 104. The intent of NLGA was "[to take] the federal courts out of the labor injunction business." *Marine Cooks & Stewards v. Panama S.S. Co.*, 362 U.S. 365, 369 (1960).

This Court has described the background and necessity for the Act. In *Burlington Northern Railroad Co. v. Brotherhood of Maintenance of Way Employes*, 481 U.S. 429 (1987), a unanimous Court stated that the congressional debates over the legislation disclosed that the Act's sponsors were convinced that the drastic step of divesting federal courts of equitable jurisdiction was necessary to remedy an extraordinary problem. The Court recounted that the NLGA responded directly to the construction of the Clayton Act in *Duplex Printing Press Co. v. Deering*, 254 U.S. 443 (1921) and to the pattern of injunctions entered by federal judges. The Court then quoted the description by the Act's sponsor, Representative LaGuardia, of

the need for the Act as typical of those offered in the House debate:

> 'Gentlemen, there is one reason why this legislation is before Congress, and that one reason is disobedience of the law on the part of whom? On the part of organized labor? No. Disobedience of the law on the part of a few Federal judges.'

Burlington Northern, 481 U.S. at 438-39. The Court continued, noting that

> 'Th[e] judge-made law of the late 19th and early 20th centuries was based on self-mesmerized views of economic and social theory . . . and on statutory misconstruction'.... It may be that the evolution of judicial attitudes toward labor in 'the decades since the Norris-LaGuardia Act was passed has dissipated any legitimate concern about the impartiality of federal judges in disputes between labor and management' .... But our decision in this case ultimately turns not on concerns of partiality, but on questions of power. In the Norris-LaGuardia Act, Congress divested federal courts of the power to enjoin secondary picketing in railway labor disputes. Congress has not seen fit to restore that power.

Burlington Northern, 481 U.S. at 453 (*citations omitted*).

This Court has repeatedly held that the Act "must not be read in a spirit of mutilating narrowness," *United States v. Hutcheson*, 312 U.S. 219, 235 (1941), and has consistently "refused to give the Act narrow interpretations that would have restored many labor dispute controversies to the courts." *Marine Cooks & Stewards*, 362 U.S. at 369. It has consistently protected the Act from erosion by a narrowing of the definition of "labor dispute."

> [W]e have long recognized that 'Congress made the definition [of "labor dispute"] broad because it wanted

> it to be broad . . . Congress attempted to write its bill in unmistakable language because it believed previous measures looking toward the same policy against nonjudicial intervention in labor disputes had been given unduly limited constructions by the Courts.'

Burlington Northern, 481 U.S.C. at 441 (quoting *Telegraphers v. Chicago & North West Railroad Co.*, 362 U.S. 330, 335-36 (1960).[1]

The law recognizes only six exceptions to the prohibitions of the NLGA. Four of these are statutory: Labor Management Relations Act § 10 injunctions, 29 U.S.C. § 160; interdiction of violence or fraud, 29 U.S.C. § 104; Taft-Hartley national emergency injunctions, 29 U.S.C. § 178; and civil rights actions, 42 U.S.C. § 2000e-5(h). Two exceptions are decisional in nature: enforcement of no-strike/arbitration clauses, *Boys Markets, Inc. v. Retail Clerk's Union Local 770*, 398 U.S. 235 (1970); and, prohibition of "minor dispute" strikes under the Railway Labor Act. *Brotherhood of Railroad Trainmen v. Chicago River & Indiana Railroad*, 353 U.S. 30 (1957).

The *Boys Markets* exception implicates another basic principal of labor law that is involved in this case. Congress has declared and this Court has repeatedly recognized that "Final adjustment by a method agreed upon by the parties is declared to be the desirable method for settlement of grievance disputes arising over the application or interpretation of an existing collective bargaining agreement." 29 U.S.C. § 173(d); *Gateway Coal Co. v. United Mine Workers*, 414 U.S. 368, 377 (1974); *United Steelworkers v. American Mfg. Co.*, 363 U.S. 564, 566 (1960).[2]

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[1] *See also Jacksonville Bulk Terminals, Inc. v. International Longshoremen's Ass'n*, 457 U.S. 702, 711 (1982) and *United States v. Hutcheson*, 312 U.S. 219, 235 (1941).

[2] Arbitration is designed to settle labor disputes quickly, as they arise. Much of its value is lost if it is stayed by a federal court. Congress has quite recently recognized this in enacting an amendment to the Federal Arbitration Act, 9

(Footnote continued)

The NLGA embodies this aspect of national labor policy by attaching special importance to the availability of arbitration as a way of resolving a labor dispute. Section 1 states that no restraining order or injunction may be issued "contrary to the public policy declared" in the Act. 29 U.S.C. § 101. One of the clearest policies of the NLGA is that no restraining order or injunctive relief shall be granted to any complainant who seeks to avoid a contractual obligation to submit a grievance to voluntary arbitration. 29 U.S.C. §108. As this Court stated in *Textile Workers Union v. Lincoln Mills*, 353 U.S. 448 (1957), "Section 8 of the NLGA does, indeed, indicate a congressional policy toward settlement of labor disputes by arbitration, for it *denies injunctive relief* to any person who has failed to make 'every reasonable effort' to settle the dispute by negotiation, mediation, or 'voluntary arbitration.' " *Id.* at 458. *(emphasis added)*.[3]

In recent years this Court has repeatedly declined invitations to make any additional exceptions to the NLGA. *See Pittsburgh & Lake Erie R.R. v. Railway Labor Executives' Ass'n*, 491 U.S.

(Footnote continued)
U.S.C. §§ 1-15. Section 16 now provides generally for interlocutory appeals from orders "impeding the expeditious disposition of an arbitration," 9 U.S.C. § 16 ("Practice Commentary"), but not from orders compelling arbitration, directing arbitration to proceed, refusing to enjoin an arbitration, or staying a judicial proceeding pending an arbitrator's resolution of an arbitrable issue. Given the special importance attached to arbitration in the labor field, delay occasioned by judicial interference is even less to be countenanced in this area.

[3] *See also, Brotherhood of R.R. Trainmen, Enterprise Lodge, No. 27 v. Toledo, Peoria & Western R.R.*, 321 U.S. 50 (1943) (holding that an employer who refuses to submit a dispute to arbitration has not made "every reasonable effort" to settle the dispute, within the meaning of § 8 of the Norris-LaGuardia Act, and is therefore barred from injunctive relief in the federal courts).

The positive requirement of the use of arbitration in NLGA § 8 explains why injunctions against arbitration are not listed in § 4. There was no reason for Congress to cross-reference this requirement. *Camping Constr. Co. v. District Council of Iron Workers*, 915 F.2d 1333 (9th Cir. 1990), *cert. denied.*, ____ U.S. ____, 111 S.Ct. 1684 (1991); *In re Dist. No. 1 – Pacific Coast Dist. Marine Engineers' Beneficial Ass'n*, 723 F.2d, 70, 74-75 at n. 2, 81 (D.C. Cir. 1983).

490 (1989); *Burlington Northern*; and *Jacksonville Bulk Terminals, Inc. v. International Longshoremen's Ass'n*, 457 U.S. 702 (1982).

B. The Facts of This Case

This case arises out of a dispute between a labor union and a multiemployer organization over the employers' breach of their collective bargaining agreement. The action was commenced by the union under § 301 of the Labor Management Relations Act ("LMRA"), 29 U.S.C. § 185, to enforce an arbitration pledge and to obtain a pre-arbitration injunction under the *Boys Markets* exception to the NLGA. The employer organization agreed that the issue was arbitrable and participated in the initial phases of the arbitration. However, not only did the district court deny the union a pre-arbitral injunction, it also, affirmed by the Second Circuit, enjoined the parties from proceeding to arbitration.

1. The Collective Bargaining Agreement

Petitioner Local 1814, International Longshoremen's Association, AFL-CIO ("Local 1814") is a labor union representing longshoremen and related crafts in the port of New York and is an affiliate of the International Longshoremen's Association, AFL-CIO ("ILA"). It acts in this case not only for itself and its members but for all ILA locals in the Port of New York and their members.

Respondent New York Shipping Association, Inc., ("NYSA") is a not for profit corporation that acts as the multiemployer collective bargaining representative for stevedores, vessel carriers and other employers of longshore and related labor in the port. NYSA and Local 1814, through its affiliation with the ILA, are parties to a collective bargaining agreement, known as the General Cargo Agreement ("GCA"), which governs the terms and conditions of longshore and related labor in the Port of New York (App. at A-7).

The GCA contains a broad arbitration clause requiring the parties to arbitrate "any grievance, dispute, complaint or claim

arising out of or relating to" the agreement (App. at A-7). The applicable provisions of the Grievance Machinery require arbitration before joint labor management bodies known as the Labor Relations Committee ("LRC") and the NYSA-ILA Contract Board, to be followed if there is no agreement by arbitration before an independent arbitrator. The GCA also expressly provides that no employer shall make any unilateral change in the agreement and that any employee discharged by an employer "shall have the right to grieve the matter under the grievance machinery."

2. **Related Litigation**

On February 14, 1990 Respondent the United States of America commenced an action in the United States District Court for the Southern District of New York pursuant to the Racketeer Influenced and Corrupt Organizations Act ("RICO"), 18 U.S.C. § 1961, *et seq.*, against Local 1814 and five other locals of the ILA[4] (App. at A-4). *United States of America v. Local 1804-1, International Longshoremen's Association, AFL-CIO, et al.*, No. 90 Civ. 0963 (S.D.N.Y. filed Feb. 14, 1990). Although the RICO complaint does not allege any wrongdoing on the part of NYSA or its members, NYSA is named as a defendant in the RICO action solely for purposes of effectuating complete relief (App. at A-4).

On or about November 13, 1991, NYSA and the government entered into a proposed Consent Judgment settling the RICO action between them, which at the time this action was commenced was being circulated among NYSA's members for their approval before being submitted to the court to be "So Ordered" (App. at A-5). The Consent Judgment provides that the government may supply NYSA with a list of individuals prohibited from seeking, obtaining or remaining in employment on the waterfront (App. at A-6 - A-7). These individuals fall into three categories: (a) defendants found in the *United States v. Local*

[4] The government has settled the RICO case with each of the six ILA locals and their officers.

1804-1 case to have violated RICO; (b) individuals determined by a United States District Court to be members of an organized crime group; and (c) individuals who have aided or abetted any individuals in groups (a) and (b) in committing a federal felony in the Port of New York. *Id.* The NYSA's members adhering to the Consent Judgment agree not to hire, and to discharge, individuals appearing on the list (App. at A-7).

3. Local 1814's Grievance

Whereas under the GCA no employee may be discharged for any reason without having the right to contest that discharge in arbitration, under the Consent Judgment, if it should become effective, NYSA members would be obligated to discharge employees whose names appeared on the government's list without those employees having the right to grieve their discharge.[5]

Local 1814 believes that for NYSA to finalize the Consent Judgment would constitute a breach of the collective bargaining agreement, which prohibits a unilateral change in the terms of the agreement, in that individuals who now have the right to grieve their discharge would lose that right if the Consent Judgment controlled (App. at A-7). The breach of the GCA would consist of both creating new grounds for discharge which are not now part of the contract and making a unilateral change in the contract in violation of its express prohibition. *Id.* Since the contractual provisions might be vitiated as soon as the

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[5] The Consent Judgment contemplates a court order to place individuals on a blacklist. However, the disqualifications of paragraphs (b) and (c) (membership in a crime group; commission of only one felony) exceed the powers of a district court under RICO. Congress considered making membership in an organized crime family a RICO violation and declined to do so. *See 116 Cong. Rec. 35343-46.* By its terms RICO requires for a violation the commission of two crimes as part of a pattern and in connection with an enterprise. *See 18 U.S.C. §§ 1961, 1962.* Local 1814 takes the position that, should these disqualifications be imposed, they would arise not from an independent order of the court but from the agreement of NYSA and the government to which the court only gives its approval.

Consent Judgment became final, the breach of contract was imminent and immediate as NYSA and the government moved towards finalization of their settlement.

Because it believed that the question of whether NYSA's attempt to modify the discharge provisions of the GCA is manifestly arbitrable under the broad arbitration provisions of the GCA, Local 1814's only recourse to assert its rights and to forestall the breach was to go to arbitration. Accordingly, on November 26, 1991, Local 1814, on behalf of its members and of all other ILA locals in the port and their members, filed a grievance embodying the claim set forth above (App. at A-7). Within a week, the LRC composed of an equal number of management and union representatives met and considered Local 1814's grievance. NYSA appeared at the arbitration, did not challenge the panel's jurisdiction, and participated in the proceedings.

The LRC deadlocked on a motion that NYSA's entering into the Consent Judgment would violate the collective bargaining agreement and that NYSA should be directed not to proceed with the consummation of the settlement. The LRC members that deadlocked also comprised the NYSA-ILA Contract Board, which is the next step in the grievance machinery. Consequently, the members unanimously agreed that the Contract Board had also deadlocked and that the matter should proceed directly to the outside arbitrator. Pursuant to custom, the ILA and NYSA agreed upon an arbitrator and undertook to schedule and arrange for the arbitration of Local 1814's claim (App. at A-7).

4. Proceedings in the District Court

At the LRC meeting NYSA announced its intention to complete and conclude the settlement by December 14, 1991. Local 1814 consequently feared that the Consent Judgment might be finalized before its grievance could be decided by the independent arbitrator. Rather than stand by and watch the Consent Judgment become final and then learn somewhere down the line that the Consent Judgment overrides the collective bargaining agreement and any arbitration award under it, Local 1814

decided to act while there was still time. On December 4, 1991, the local commenced this action against NYSA seeking a reverse "*Boys Markets*" injunction to preserve the status quo until the arbitration process was completed (App. at A-8). *See Greyhound Lines v. Amalgamated Transit Div. 1384*, 429 U.S. 807 (1976); *Niagara Hooker Employees Union v. Occidental Chemical Corp.*, 935 F.2d 1370 (2d Cir. 1991).

The government was allowed without opposition to intervene as a defendant. Before the arbitration could be held, the government advised the attorneys for Local 1814 and the ILA that it had "obtained a temporary restraining order staying any arbitration to the Consent Decree," which the district court had granted *ex parte* (App. at A-9).

Local 1814 opposed the government's motion, raising the NLGA as a complete bar to the district court's jurisdiction to issue any injunction restraining arbitration under the collective bargaining agreement (App. at A-9). At the close of argument on the government's motion for a preliminary injunction the district court, Honorable Leonard B. Sand, District Judge, rendered a decision from the bench. It granted a temporary injunction against arbitration until the time when Local 1814's application for a reverse *Boys Markets* injunction would be heard (App. at A-9 - A-12).

On the return date the district court denied Local 1814's motion for a reverse *Boys Markets* injunction, granted the government's motion to dismiss the complaint in this case, and permanently enjoined arbitration of Local 1814's grievance that NYSA's entering into the Consent Judgment would violate the GCA (App. at A-12). Despite the fact that both parties to the contract agreed that the issue was arbitrable and were willing to continue with the arbitration, the district court held that Local 1814's grievance was not arbitrable. The court's rationale was that an arbitrator could consider only the breach of the collective bargaining agreement and could not take into account the public-interest questions arising out of the RICO context from which the proposed Consent Judgment emerged (App. at A-15). The court gave short shrift to the union's NLGA argument,

finding that it had jurisdiction to grant the injunction under not only the RICO statute but the All Writs Act, and the inherent power of the Court to preserve its jurisdiction.

The district court *sua sponte* deferred any consideration of the Consent Judgment until after a decision by the Second Circuit on Local 1814's motion for a stay pending appeal. This deadline was later extended upon the agreement of the parties until two weeks after a decision on the appeal.

5. **Proceedings in the Court of Appeals.**

On appeal, the Second Circuit held that Local 1814's grievance with NYSA was arbitrable under the collective bargaining agreement and that the issue was ripe for arbitration (App. at A-21 - A-23). The court of appeals also recognized that this case arose out of a labor dispute and so normally would be subject to the strictures of the NLGA (App. at A-25 - A-27). However, the court held that the purpose of Congress in enacting RICO, to rid labor unions of the influence of organized crime, required that the grant of jurisdiction in RICO to grant equitable relief, 18 U.S.C. § 1964, in conjunction with the All Writs Act, 28 U.S.C. § 1651, be construed to take precedence over the bar of the NLGA. The court said:

> [T]he general prohibitions on equity jurisdiction contained in the Norris-LaGuardia Act [must] give way to the more specific grant of such jurisdiction under RICO. More specifically, the Norris-LaGuardia anti-injunction provision must give way to the compelling governmental interest of eliminating the hold of organized crime on labor unions as contemplated by RICO.

App. at A-32.

On June 22, 1992, the Second Circuit granted petitioner's motion pursuant to Fed. R. App. P. 41(b) for a stay pending this application for a writ of certiorari. The district court has deferred consideration of the Consent Judgment until the expiration of the stay.

REASONS FOR GRANTING THE WRIT

Because of its desire to control the settlement in the related RICO case, the district court in this case blatantly disregarded the Congressional proscription against injunctions in labor disputes. The district court offered sophistic and untenable reasons why the NLGA did not apply, which the court of appeals could not accept. But, having disagreed with the district court on virtually every issue and having rejected the arguments of appellees, the Second Circuit affirmed on the even more tenuous theory of accommodating two federal statutes. The court of appeals' use of the general purposes of RICO to nullify the NLGA not only decides an important question of federal law and introduces a novel exception to the NLGA but also is in such conflict with controlling decisions of this Court and with decisions of other courts of appeals as to warrant review and correction.

The Second Circuit decision sweeps away two foundations of federal labor law, the NLGA and arbitration of labor disputes, not on account of any direct conflict with express provisions of another statute[6] but in aid of some general purpose or intention in RICO as devised by the court. Its use of the All Writs Act, 28 U.S.C. § 1651, as the mechanism to avoid the prohibitions of the NLGA is particularly mischievous.[7] To say that the All Writs Act permits a court to do what the NLGA prohibits is to

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[6] The court of appeals points to the grant of general equitable powers in RICO as evidence of congressional intent to supersede the NLGA. *See* App. at A-31. This is disingenuous, since all the powers of the lower federal courts are granted by Congress. It is especially inapposite in light of the Second Circuit's refusal to make the NLGA give way to the more specific grant of equitable jurisdiction in the Bankruptcy Code. *See* cases at pp. 20-21 below. When Congress wishes a grant of jurisdiction to override the NLGA, it says so.

[7] The All Writs Act preceded passage of the NLGA. By § 14 of the Judiciary Act of September 24, 1789 (1 Stat. 81, c. 20), carried forward as § 716 of the

(Footnote continued)

say that the NLGA does not exist. *See United States v. FMC Corp.*, 84 S.Ct. 4 (1963); *Thompson Products, Inc. v. NLRB*, 133 F.2d 637, 639-40 (6th Cir. 1943).

The court of appeals' rejection of the NLGA is not to enforce any statutory duty imposed on the union or to vindicate any grant of power to the district court. Rather, it is to permit the government to carry out a ploy that will enable it to obtain more relief in the action by way of settlement than it could through litigation. Parties to an action can agree to relief beyond that which a court could grant on its own. This Court has noted:

> [I]t is the parties' agreement that serves as the source of the Court's authority to enter judgment at all ... More importantly, it is the agreement of the parties, rather than the force of the law upon which the complaint was originally based, that creates the obligations embodied in a Consent Decree.

Local Number 93, International Association of Firefighters v. City of Cleveland, 478 U.S. 501, 522-23 (1986).

In this case, the government named NYSA as a party not because NYSA was alleged to have violated RICO but solely for purposes of relief. Having kept NYSA in the wings for almost 2 years and having settled with all but four or five individual defendants, the government trotted out NYSA and entered into a Consent Judgment which gave the government power to

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(Footnote continued)
Revised Statutes, the Supreme Court, circuit courts and district courts of the United States were empowered by Congress to issue all writs not specifically provided for by statute, which may be agreeable to the usages and principles of law. *See Adams v. United States ex rel. McCann*, 317 U.S. 269, 272-73 (1942). Section 15 of the NLGA, entitled "Repeal of Conflicting Acts" provides: "All acts and parts of acts in conflict with the provisions of this chapter are repealed." 29 U.S.C. § 115. Absent some clear intention to the contrary, a specific statute will not be controlled by a general one, regardless of the priority of enactment. *Crawford Fitting Co. v. J.T. Gibbons, Inc.*, 482 U.S. 437 (1987).

remove longshore employees throughout the port, who had never been parties to the case, on grounds that do not violate RICO. *See supra* note 5. NYSA, of course, was only too willing to buy its way out of the lawsuit by giving up nothing of its own but only the rights of its employees.

The stumbling block was that in giving the government what it wanted, NYSA would violate its collective bargaining agreement which gave rise to a right of the union to arbitrate.[5] Rather than stand in the way of the government's maneuver, the district court and the court of appeals simply crushed the rights of the union and its members and did so by disregarding the express prohibition by Congress in the NLGA.

The attitude displayed by the lower courts is clearly one of "RICO *über alles*." So zealous are they to accomplish the undeniably desirable objective of fighting organized crime that they permit no legal principle, no rights of third parties, not even the will of Congress to interfere.

The good guys/bad guys attitude that pervades the opinion in this case has been reflected in other recent decisions of the Second Circuit involving RICO. In *United States v. International Brotherhood of Teamsters*, 954 F.2d 801 (2d Cir. 1992), *cert. denied sub nom. Star Market Company v. United States*, 60 U.S.L.W. 3746 (U.S., June 22, 1992) (No. 91-1674), it held that the desirability of a crime-fighting settlement overrode the right of a non-party employer to arbitrate under its collective bargaining agreement. In *United States v. International Brotherhood of Teamsters*, 907 F.2d 277 (2d Cir. 1990), the court held that under the All Writs Act a district court could issue injunctions binding upon persons who were not parties to the case before

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[5] This Court has recognized that an employer entering into a settlement with the government is not relieved of its obligations under its collective bargaining agreement or of its duty to arbitrate. *W.R. Grace & Co. v. Local Union 759*, 461 U.S. 757 (1983).

it and who had actually been denied leave to intervene. In a case in which a petition for a writ of certiorari is presently pending, *United States v. International Brotherhood of Teamsters*, 948 F.2d 98 (2d Cir. 1991), *petition for cert. filed*, No. 91-1938, (*Yellow Freight*), the circuit court permitted use of the All Writs Act to impose obligations created by a consent decree upon one who was not a party to the action. The court also permitted the consent decree to supersede the jurisdiction of the National Labor Relations Board to hear complaints over access to an employer's premises.

In each of the *International Brotherhood of Teamsters* cases the court of appeals was dealing with a consent judgment that had already been entered. In none of those cases did the parties raise or argue the bar of the NLGA. The dissenting judge in *Yellow Freight* said:

> [The decision] offers no limits to the power of parties to consent decrees to alter radically the substantive legal rights of non-parties by invoking the public interest and the All Writs Act.

Yellow Freight, 948 F.2d at 111 (Winter, J., dissenting). His remarks apply with a vengeance in this case:

The present Chief Justice of this Court once began a dissent with the observation,

> It is admittedly difficult to be outraged about the treatment accorded by the federal judiciary to petitioners . . . in this lawsuit. Outrage is an emotion all but impossible to generate with respect to [this] defendant . . . .

Parklane Hosiery Co. v. Shore, 439 U.S. 322, 337-38 (1979) (Rehnquist, J., dissenting). Apparently, the Second Circuit in this case, in the mistaken belief that only organized crime

members or associates could object to the Consent Judgment,[9] feels the same way. But the point of Justice Rehnquist's dissent was that, no matter how unsympathetic, the defendants were entitled to the protection of the laws. That basic principle of our jurisprudence is what the Second Circuit decision, in its eagerness to pursue possible criminality, disregards in its divergence from the positions enunciated by this Court and other courts of appeals.

1. The Court Of Appeals Has Decided A Federal Question In A Way That Conflicts With Applicable Decisions Of This Court.

The decision of the court of appeals is in flagrant conflict with holdings of this Court that the NLGA ban on federal injunctions is not lifted because the conduct of the union may be unlawful under some other, non-labor statute. *Order of Railroad Telegraphers v. Chicago and North Western Railroad Co.*, 362 U.S. 330, 339 (1960); *Milk Wagon Drivers' Union Local No. 753 v. Lake Valley Farm Products, Inc.*, 311 U.S. 91, 103 (1940). In *Telegraphers*, the Court warned that a holding "that mere unlawfulness under any law is enough to remove the strictures of the NLGA would require a modification or abandonment" of the declared congressional purpose and "would run counter to the mandate of the Act." 362 U.S. at 339 n. 15.

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[9] In fact, petitioner's interest is not to protect organized crime members and their abettors. The government can reach these criminals in the manner that Congress has established — — by bringing RICO or criminal actions against them. Petitioner seeks to protect its members, who may be *accused* of organized crime connections, from being hauled before an ersatz tribunal created, not by Congress nor by a court in exercise of its legitimate powers, but by two parties to an agreement in a case where the longshore employees were not even parties. These "agreed-to" tribunals need not follow the rules of due process that bind a court. *United States v. International Bhd. of Teamsters*, 941 F.2d 1292 (2d Cir. 1991). Having observed the kind of rough and ready procedure that passes for justice in these tribunals, petitioner owes a duty to its members to preserve their right to arbitrate any dismissals under their collective bargaining agreement.

Earlier, in *Milk Wagon Drivers' Union Local 753*, this Court held that federal courts do not have jurisdiction to grant injunctions in cases growing out of labor disputes merely because alleged violations of the Sherman Act are involved. 311 U.S. at 103. Recently, in *Burlington Northern*, this Court reaffirmed this rule. 481 U.S. at 434 n. 3.[10]

The exculpatory language at the end of the decision of the court of appeals to the effect that it was not holding that mere unlawfulness under any law is enough to avoid the NLGA, *see* App. at A-34, does not change the realities. What governs is not what the court said, but what it did. And what it did was manifestly to set aside the NLGA prohibitions not even for unlawfulness under another law but for something less. The same approach and reasoning that the Second Circuit employed in favor of RICO is not limited to that statute but, if sanctioned, can be used to set aside the NLGA for the benefit of any law a reviewing court may favor. This is precisely the situation that NLGA intended to avoid and that the decisions of this Court through the years have not permitted.

The Second Circuit also departs from the consistent position of this Court in resisting invitations to make any additional exceptions to the NLGA. *See Pittsburgh & Lake Erie R.R. Co.*, 491 U.S. 490 (1989); *Burlington Northern*, 481 U.S. 429 (1987); and *Jacksonville Bulk Terminals, Inc.*, 457 U.S. 702 (1982).

The dichotomy between the Second Circuit's approach and the approach mandated by repeated decisions of this Court is apparent from the invocation by the court of appeals of this Court's language in *Pittsburgh & Lake Erie R.R. Co.*, 491 U.S.

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[10] Thus, even if the government here had alleged that Local 1814 violated RICO or some other non-labor statute, which it did not, the district court still lacked jurisdiction. Nothing in the RICO statute or in its legislative history suggests that Congress intended to exempt it from the proscriptions of the NLGA. Repeals by implication are not favored and will not be found absent clear and manifest intent. *See Rodriguez v. United States*, 480 U.S. 522, 524 (1987). When Congress wishes to carve out an exception to the blanket prohibition of the NLGA, it makes that abundantly clear. *See, e.g.*, 29 U.S.C. § 160(h); 42 U.S.C. § 2000e-5(h); 29 U.S.C. § 178(b).

at 514, to the effect that "[t]he prohibition of the [Norris-LaGuardia Act] must give way when necessary to enforce a duty imposed by another statute." *See* App. at A-32. Manifestly, this Court was talking about a duty imposed by another statute *on the striking union*, and in *Pittsburgh & Lake Erie* it found no such duty and remanded, noting, "[W]e are thus quite sure that the [Norris-LaGuardia Act] forbade an injunction against that strike unless the strike was contrary to the duties under the RLA." 491 U.S. at 514. This has been the traditional understanding of this Court and the courts of appeals. *See Order of R.R. Telegraphers*, 362 U.S. at 342; *Pan American World Airways v. Flight Engineers' Int'l Ass'n*, 306 F.2d 840, 846-47 (2d Cir. 1962); *Federal Express Corp. v. Teamster Union, Local #85*, 617 F.2d 524 (9th Cir. 1980).[11]

In this case, RICO neither imposes any duty on the union nor empowers a district court, *sans* the consent of the settling parties, to grant the relief contemplated in the Consent Judgment. Nevertheless, the Second Circuit takes this Court's language as a license to make the NLGA's anti-injunction provision "give way to the compelling governmental interest of eliminating the hold of organized crime on labor unions as contemplated by RICO." App. at A-32.

The conflict is particularly sharp. The Second Circuit here permits nullification of the NLGA for conduct that is not unlawful under any law. No one has suggested that Local 1814's attempt to arbitrate its grievance violates RICO. On the contrary, the union acted fully in accord with its contract and with national labor law. Nor is the Consent Judgment premised on

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[11] The Ninth Circuit expressed the rule:

> The [Supreme] Court has held that the Norris-LaGuardia Act is no bar to an injunction in a case for which the RLA provides the process for final decision . . . When no specific legal command of the RLA is violated, however, the Norris-LaGuardia Act generally deprives the courts of jurisdiction to enter injunctions.

Federal Express, 617 F.2d at 526 (*citations omitted*).

any alleged violation of RICO by NYSA. The court of appeals overrides the NLGA not to give effect to any statutory provision that Congress has enacted or to vindicate any grant of power to the district court, but merely to facilitate a settlement and to accommodate some general legislative purpose in the RICO statute as a whole. This approach is at odds with the consistent position of this Court over six decades and calls for review.

2. The Decision Of The Court of Appeals Is In Conflict With Decisions Of Other United States Courts Of Appeals.

The Second Circuit's decision is also in conflict with the decisions of other circuit courts of appeals which have declined to permit the congressional purposes of other statutes to overrule, *via* "accommodation," the bar of the NLGA. *See Crowe & Associates, Inc. v. Bricklayers and Masons Union Local No. 2*, 713 F.2d 211 (6th Cir. 1983), in which the Court of Appeals for the Sixth Circuit refused to find that the Bankruptcy Reform Act supersedes the anti-injunction provisions of Norris-LaGuardia, *Id.* at 214, and rejected the argument it should create a new exception for acts prohibited by the Bankruptcy Act. *Id.* at 215-16. *See also Briggs Transp. Co. v. International Bhd. of Teamsters*, 739 F.2d 341, 343 (8th Cir.), *cert. denied*, 469 U.S. 917 (1984) (no accommodation of NLGA due to the Bankruptcy Code or to the Supreme Court *Bildisco* decision); *Central Vermont Ry., Inc. v. Brotherhood of Maintenance of Way Employees*, 793 F.2d 1298, 1302-03 n. 7 (D.C. Cir. 1986) (holding that because there was no Railway Labor Act duty to enforce in the case, there was nothing to which the NLGA need be "accommodated"); *Congreso De Uniones Industriales De Puerto Rico v. V.C.S. National Packing Co.*, 953 F.2d 1 (1st Cir. 1991) (rejecting a union's argument that it disregard the prohibition of the NLGA and create a new exception on the ground that an imminent plant closing justified the relief); *Brotherhood of Maintenance of Way Employees v. Guilford Transp. Industries, Inc.*, 803 F.2d 1228, 1234-35 (1st Cir. 1986), cert. denied, 481 U.S. 1037 (1987) (neither Railway Labor Act nor

Interstate Commerce Act avoids proscriptions of the NLGA); *Elsinore Shore Associates v. Local 54, Hotel Employees and Restaurant Employees Int'l Union*, 820 F.2d 62, 66 (3d Cir. 1987) (specific policy of expediting court of appeals review of actions under NLGA overrides the general procedural policy of requiring appeals from the bankruptcy court in cases proceeding first to the district court). The Fourth Circuit has said:

> We perceive no specific legislation or paramount congressional policy, either in the RLA or in the Interstate Commerce Act, which would support an 'accommodation' exception to the anti-injunction mandate of Norris-LaGuardia, under the facts presented by this case. *Appellant cannot simply rely on the general purposes of these statutes, i.e.* to provide uninterrupted rail service and safe and adequate transportation, *in order to supply the specific congressional policy necessary to override Norris-LaGuardia's prohibition of injunctive relief.*

Richmond, Fredericksburg and Potomac Railroad Co. v. Brotherhood of Maintenance of Way Employees, 795 F.2d 1161, 1165 (4th Cir. 1986), *cert. denied*, 481 U.S. 1036 ((1987) (*emphasis added*).

The decision also conflicts with the decisions of other circuits which hold that an order staying labor arbitrations is a "classic form of injunction" barred by the NLGA. *See Camping Constr. Co. v. District Council of Iron Workers*, 915 F.2d 1333, 1343 (9th Cir. 1990), *cert. denied*, ____ U.S. ____, 111 S. Ct. 1684 (1991); *In re Dist. No. 1 Pacific Coast Dist., Marine Engineers' Beneficial Ass'n*, 723 F.2d 70, 74-75 at n. 2 (D.C. Cir. 1983).

Indeed, the decision is at odds with other decisions of the Second Circuit itself, which have recognized that the only accommodation that can be made is with other labor statutes,[12] *see*

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[12] The Second Circuit's recounting of RICO's "labor specific" predicate acts and legislative findings, *see* App. at A-29 - A-31 hardly turns RICO into a labor statute. By that standard RICO would also be, among other things, a sports statute, a motor vehicle statute and a securities statute, since it includes predicate acts specifically connected with those activities. *See* 18 U.S.C. § 1961 (1); App. at B-4 - B-5.

Local 553, Transport Workers v. Eastern Air Lines, Inc., 695 F.2d 668 (2d Cir. 1982); *see also In Re Petrusch*, 667 F.2d 297 (2d Cir. 1981), *cert. denied*, 456 U.S. 974 (1982), and which have held that injunctions against labor arbitrations are barred by Norris-LaGuardia. *Jou-Jou Designs, Inc. v. International Ladies Garment Workers Union*, 643 F.2d 905 (2d Cir. 1981). The Second Circuit said

> The Norris-LaGuardia Act denies the federal courts 'jurisdiction to issue an injunction against any lawful act involving or growing out of a labor dispute.' 29 U.S.C. § 107. The term 'labor dispute' includes conflicts between employees, as in this case, and not only conflicts between employers and employees. *Green v. Obergfell*, 121 F.2d at 50. Since the plaintiffs have failed to make out a viable claim that this arbitration is unlawful, the federal courts lack not only cause but also the power to interfere with this arbitration.

Jou-Jou Designs, 643 F.2d at 911.

In the past, the Second Circuit has also held that the automatic stay provision of the Bankruptcy Reform Act of 1978, 11 U.S.C. §362, do not supersede the anti-injunction provision of the NLGA, which precludes courts from enjoining union conduct. *In Re Petrusch*, 667 F.2d 297. The court of appeals noted:

> Concern for the preservation of estates in bankruptcy and prevention from interference in their *status quo* has had a long history and effective remedies bottomed on the concept of *custodia legis*, but with exceptions and limitations. . . . Congress, pursuant to its constitutional powers, carved out an exception in labor disputes by withdrawing jurisdiction of all United States courts. Art. III, Sec. 1.

Id. at 300.[13]

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[13] *See also Truck Drivers Local Union No. 807, International Bhd. of Teamsters v. Bohack Corp.*, 541 F.2d 312 (2d Cir. 1976), *cert. denied*, 439 U.S. 825 (1978); *In Re Third Ave. Transit Corp.*, 192 F.2d 971, 973 (2d Cir. 1951).

The conflict between the decision in this case and the decisions of other courts of appeals and of the Second Circuit itself in cooler moments calls for review by this Court.

3. The Court Of Appeals Has Decided An Important Question Of Federal Labor Law Which Has Not Been, But Should Be, Settled By This Court.

The decision for which review is sought creates an exception to the NLGA in favor of RICO. The antagonism between the Second Circuit's decision and the position taken by this Court and by all the courts of appeals, which have steadfastly for over half a century protected the NLGA from erosion, militates for review by the Supreme Court. Petitioner believes that the Second Circuit is so far out of line that its violation of Congress' express prohibition should be rejected out of hand and no new exception permitted. If, however, another exception to the NLGA is to be considered, that decision should be made by the highest Court.

The Second Circuit's decision actually involves two important questions of federal law of great concern to the entire labor community. First, it sets forth implicitly the general principle that, without an express declaration by Congress, the NLGA may be accommodated *via* the All Writs Act to any non-labor federal statute if the reviewing court finds that application of the NLGA interferes not with any concrete express statutory provision but merely with some congressional policy or public interest that the reviewing court discerns in the other statute. This is a novel principle of widespread importance. If it is to be introduced into our jurisprudence, it should not be without review by this Court.

Second, the decision creates a particular exception to the NLGA – the first in 22 years – in favor of RICO. In the sixty year history of the NLGA only two judicial exceptions have been made: enforcement of no strike/arbitration clauses, *Boys Markets, Inc.*, and prohibition of "minor dispute" strikes under the

Railway Labor Act, *Brotherhood of Railroad Trainmen*. In both instances it was this Court which created the exception. Since 1970 the Court has resisted all attempts to create further exceptions. *Burlington Northern*, 481 U.S. at 451. Certainly questions of this magnitude, which go to the mainstays of national labor law and policy, deserve to be reviewed by the Supreme Court, as have all other judicial exceptions to the NLGA.

CONCLUSION

The following colloquy has been attributed to the great Chancellor, Sir Thomas More:

> Roper: So! Now you give the Devil benefit of law!
>
> More: Yes. What would you do, cut a great road through the law to get after the Devil?
>
> Roper: Yes! I'd cut down every law in England to do that!
>
> More: Oh? And when the last law was down and the Devil turned round on you, where would you hide, Roper, the laws all being flat?
>
> * * *
>
> Yes, I give the Devil benefit of law for my own safety's sake.

Robert Bolt, "A Man For All Seasons."

Whether the words be the historical More's or only the playwright's, the insight is profound. This Court should grant the petition and review this case to rein in the misguided enthusiasm of the lower courts which use RICO to hack that great road through the law.

The petition for a writ of certiorari should be granted.

Dated: New York, New York
July 22, 1992

Respectfully submitted,

THOMAS W. GLEASON
26 Broadway, 17th Floor
New York, New York 10004
(212) 425-3240

Attorney for Petitioner

Of Counsel:

ERNEST L. MATHEWS, JR.
KEVIN MARRINAN
MAURA R. CAHILL

APPENDIX A

APPENDIX A

UNITED STATES COURT OF APPEALS

FOR THE SECOND CIRCUIT

No. 1338—August Term 1991

Argued: March 16, 1992 Decided: June 1, 1992

Docket No. 92-6018

LOCAL 1814, INTERNATIONAL LONGSHOREMEN'S ASSOCIATION, AFL-CIO,

Plaintiff-Appellant,

—against—

NEW YORK SHIPPING ASSOCIATION, INC.,

Defendant-Appellee,

UNITED STATES OF AMERICA,

Defendant-Intervenor-Appellee.

Before:

MESKILL and PRATT, *Circuit Judges,*
and Eugene H. NICKERSON, *District Judge*
of the United States District Court for the Eastern
District of New York, sitting by designation.

Appeal from a judgment of the United States District Court for the Southern District of New York, Leonard B. Sand, *Judge*, which (1) denied a "reverse *Boys Markets* injunction" designed to prohibit employer from taking any steps to finalize a RICO consent judgment with the government, and (2) enjoined labor arbitration sought by plaintiff.

We affirm.

ERNEST L. MATHEWS, JR., New York, NY (Thomas W. Gleason, Kevin Marrinan, New York, NY, of Counsel), *for Plaintiff-Appellant*.

DONATO CARUSO, New York, NY (Lambos & Giardino, C. Peter Lambos, New York, NY, of Counsel), *for Defendant-Appellee*.

CHAD A. VIGNOLA, Assistant United States Attorney for the Southern District of New York, New York, NY (Otto G. Obermaier, United States Attorney for the Southern District of New York, Richard W. Mark, Assistant United States Attorney for the Southern District of New York, of Counsel), *for Defendant-Intervenor-Appellee*.

PRATT, *Circuit Judge*:

When two federal statutes apply to a situation, but are seemingly incompatible, which one must give way? That

is the issue we are faced with on this appeal, which arises from the intersection of the Racketeer Influenced and Corrupt Organizations Act (RICO), 18 U.S.C. § 1961-1968, and the Norris-LaGuardia Act, 29 U.S.C. § 101-115. Plaintiff, Local 1814, International Longshoremen's Association, AFL-CIO ("Local 1814", or "the union") appeals from a judgment of the United States District Court for the Southern District of New York, Leonard B. Sand, *Judge*, which (1) dismissed the union's complaint seeking arbitration under its collective bargaining agreement with defendant New York Shipping Association, Inc. (NYSA), (2) denied the union's request for a "reverse *Boys Markets* injunction", and (3) permanently enjoined "any arbitration involving Local 1814's grievance" that by entering into a proposed consent judgment with the government, NYSA would violate its collective bargaining agreement with Local 1814.

On appeal, Local 1814 contends that the Norris-LaGuardia Act, which divests federal courts of jurisdiction to enter injunctions in all "labor disputes", takes precedence over RICO, a criminal statute that gives district courts civil "jurisdiction to prevent and restrain violations of [the act] by issuing appropriate orders"; thus, the union argues, the district court's injunction was in excess of its jurisdiction. We reject the argument and accordingly affirm the judgment of the district court.

FACTS AND BACKGROUND

Although disposition of this appeal turns on questions of law and involves largely undisputed facts, it is nevertheless necessary to review the events underlying this action in some detail before we can review the decisive legal issues.

A. *The government institutes a civil RICO action.*

In an effort to rid the Port of New York and New Jersey (the waterfront) of the influence of organized crime, the government instituted, on February 20, 1990, a civil RICO action (the waterfront case) against numerous defendants. *See* 18 U.S.C. § 1964. The complaint named as defendants purported members of the Genovese and Gambino organized crime families, purported members of the "Westies" organized crime group, six union locals (including Local 1814), two waterfront employers, and two waterfront employers' organizations (including NYSA). The employers and employers' organizations named as defendants were named not as RICO violators, but simply as "Representatives of Employers in Industries Affecting Waterfront Commerce" in order to effectuate complete relief.

The 125-page civil RICO complaint sought extensive equitable relief against the various defendants, not unlike the sweeping reforms sought by the government in the ubiquitous *Teamsters* litigation, which by now is well-chronicled in second circuit caselaw. *See*, *e.g.*, 905 F.2d 610 (2d Cir. 1990); 907 F.2d 277 (2d Cir. 1990); 931 F.2d 177 (2d Cir. 1991). More specifically, the government sought in the waterfront case (1) to bar organized crime members and their associates from involvement with the International Longshoremen's Association (ILA), as well as (2) reforms of disciplinary and election procedures within the union locals in order to prevent future influence of organized crime. Four of the six locals have already entered into consent judgments with the government, each of which has been approved by Judge Sand.

B. *A RICO trial takes place.*

Local 1814, along with the remaining defendants in the waterfront case, went to trial. This trial began before Judge Sand on April 15, 1991, and consumed nine weeks over a period of seven months. On December 17, 1991, the day that the defense cases were to begin, Local 1814 and its officers agreed to a proposed consent judgment, which settled the government's claims against Local 1814.

C. *Terms of the Local 1814 consent judgment.*

This consent judgment provided for the appointment of a "monitor" to oversee certain operations of Local 1814; it stipulated Local 1814's acknowledgements (1) "that there should be no criminal element or organized crime corruption of any part of the ILA, including Local 1814", (2) that the United States District Court for the Southern District of New York "has jurisdiction over the subject matter of this action", and (3) "that this Consent Decree is a lawful exercise of the Court's jurisdiction"; and further provided for a permanent injunction against racketeering activity by the union and its members, for specific amendments of its constitution and by-laws, and for the resignation of certain high-ranking officials of Local 1814. Judge Sand approved the consent judgment on December 17, 1991.

D. *NYSA and the government agree on a proposed consent judgment.*

On November 27, 1991, NYSA and the government also executed a stipulation of settlement in the form of a proposed consent judgment. The pertinent portion reads as follows:

3. *List of Individuals Barred From Waterfront Employment.* At any time after completion of litigation in the District Court in this case, [the government] may provide to NYSA a list, approved by this Court, of individuals prohibited from seeking, obtaining, or remaining in employment on the Waterfront. The list, if so approved by the Court, may include and identify by name and social security number: (a) any individual defendant herein found to have engaged in a RICO violation in this case; (b) any individual determined by a United States District Court to be a member, as that term is used in the complaint, of any organized crime group, as that term is used in the complaint; or (c) any individual who has aided and abetted (within the meaning of 18 U.S.C. § 2) any individual described in subdivision (a) or (b) of this paragraph in committing a federal felony in the Port of New York and New Jersey.

With respect to subdivisions (b) and (c) of this paragraph, the Government may seek entry of an order in accordance with 18 U.S.C. § 1964(a) and consistent with the terms of this Consent Judgment which shall state the standards and procedures to be utilized in determining whether an individual falls within subdivision (b) or (c) of this paragraph and thus should be prohibited from seeking, obtaining, or remaining in employment on the Waterfront. Plaintiff may apply to the Court to place any individual on the list described in subdivision (b) or (c) of this paragraph by giving notice to that individual, NYSA, and any known employer of said individual. Proceedings to place individuals on the list shall be conducted in accordance with the Federal Rules of Evidence. The prohibition pertaining to any individual shall remain

in effect for so long as the authority issuing the prohibition maintains it in effect.

This proposed consent judgment contains two other terms relevant to Local 1814's challenge: (1) NYSA "will not knowingly employ in any capacity any individual whose name appears on the list described in paragraph 3 for so long as the Court's injunction against the individual remains in effect"; and (2) the district court shall retain exclusive jurisdiction to enforce the consent judgment "and to conduct any proceedings related thereto."

Judge Sand has not yet approved this consent judgment.

E. *Local 1814 files a grievance.*

Local 1814 and NYSA, among others, were parties to a collective bargaining agreement which provided, *inter alia*, for arbitration of "[a]ny grievance, dispute, complaint or claim arising out of or relating to" the collective bargaining agreement. Believing that NYSA's consent judgment would (1) create new grounds for discharge not otherwise present in the collective bargaining agreement and (2) make a unilateral change in the terms of the collective bargaining agreement (in violation of a specific portion of the agreement prohibiting such unilateral changes), Local 1814 filed a grievance embodying this claim and seeking to prevent NYSA from entering into the consent judgment. After the labor-management panels charged with reviewing grievances in the first three stages of the grievance machinery (processes provided for in the collective bargaining agreement) all deadlocked, the grievance was referred to the arbitration process, the fourth stage in the collective bargaining agreement's grievance machinery.

F. *Local 1814 commences the instant action.*

On December 3, 1991, Local 1814 learned that NYSA intended to conclude the consent judgment by reaching an agreement with the government no later than December 14, 1991. Noting that our decisions in *United States v. International Bhd. of Teamsters*, 954 F.2d 801 (2d Cir. 1992) (*Star Market*) and *United States v. International Bhd. of Teamsters*, 948 F.2d 98 (2d Cir. 1991) (*Yellow Freight*) stand for the proposition that court-ratified consent judgments create rights and duties that are binding on nonparties and that override provisions in a collective bargaining agreement, Local 1814 commenced this action (the arbitration case) on December 4, 1991. The action was assigned to Judge Sand as a related case to the waterfront case.

In its complaint, Local 1814 sought a temporary restraining order, a preliminary injunction, and a permanent injunction against NYSA, all designed to prohibit NYSA from taking any action "designed to complete and effectuate said consent judgment pending final disposition of this case or a final resolution of the matter through arbitration." Without opposition, the government was permitted to intervene in the arbitration case as a defendant. The application for a temporary restraining order was withdrawn, based upon the joint representation of NYSA and the government that pending an order of the district court they would take no further steps to finalize the consent judgment in the waterfront case. The motion for preliminary relief was set down for argument before Judge Sand on January 9, 1992.

G. *The government applies for an injunction against arbitration.*

Local 1814 proceeded to move ahead with expedited arbitration. It agreed to one of the four arbitrators proposed by NYSA, and the arbitration was scheduled for December 19, 1991. However, on December 18, the government advised Local 1814's attorneys that it had obtained an *ex parte* temporary restraining order in the arbitration case which "stayed" the arbitration until Judge Sand could rule on the government's motion for a preliminary and permanent injunction of the arbitration.

On December 20, Judge Sand heard argument on the government's "application" to stay the arbitration until the district court could rule on (1) the government's pending motion to dismiss the union's complaint in the arbitration case, and (2) Local 1814's motion to enjoin the parties from completing the settlement and submitting the proposed consent judgment to the court. Local 1814 argued to the district court that such a stay of arbitration would constitute an injunction in violation of §§ 1 and 4 of the Norris-LaGuardia Act, 29 U.S.C. §§ 101, 104, which divest United States courts of "jurisdiction to issue any restraining order or temporary or permanent injunction in any case involving or growing out of any labor dispute". The government, in turn, argued that an injunction of the arbitration proceeding was necessary under the All Writs Act, 28 U.S.C. § 1651, in order for the district court to preserve its RICO jurisdiction and its power to approve the proposed consent judgment.

H. *The district court preliminarily enjoins the arbitration.*

Judge Sand found Local 1814's jurisdictional argument unconvincing. Due to the time constraints inherent in the

dispute, he read his decision from the bench. Since this decision is unpublished and not available in any electronic database, and since we recognize that there may well be more litigation in the future concerning the waterfront case, we reproduce the pertinent portions:

> The court is of the opinion that it has jurisdiction to entertain this application, and that the temporary relief which the government seeks is * * * carved out by the Norris[-] LaGuardia Act, contrary to the position espoused by counsel for 1814.
>
> Having concluded that the court has jurisdiction, we examine the government's application by the traditional standards which govern consideration of an application for a temporary restraining order which are the same standards as those which govern a preliminary injunction, and the first inquiry is therefore whether the government will suffer irreparable injury.
>
> The court is of the opinion that for these purposes irreparable injury would be sustained by the government. It is clear that the purpose of holding an expedited arbitration, despite the absence of any truly exigent circumstances, and despite the timetable previously established, is to enable Local 1814 and the International to place this dispute in the context of one which an[ ] arbitrable labor dispute has been submitted to an arbitrator so that all of the presumptions and deference normally accorded such an arbitration result will be operative at the time of the January 9 argument.
>
> * * *
>
> Passing the issue of irreparable injury, therefore, we turn to the question of likelihood of success on

the merits. This court, having had but a few hours to address the question, believes that there are very serious questions which go to whether or not there is presently an arbitrable dispute or whether it is premature, and indeed a question whether it will ever be an arbitrable dispute.

* * *

It is the contention which Local 1814 and the International wishes to be submitted to the arbitrator that this agreement provides a grounds for termination of employment of members of Local 1814 not contained in the [collective bargaining agreement], and therefore is in violation of the collective bargaining agreement, and that it presents a presently arbitrable grievance.

The court believes that there are significant problems with that claim. The relevant provision of the collective bargaining agreement triggers the grievance and arbitration provisions on the discharge by a member of the NYSA of a member of 1814. Entering into the consent decree or submission of the consent decree for the approval of the court does not [constitute the] discharge of [an] employee. Indeed, it is clear that the consent decree will not impact on any individual member of Local 1814 or result in an order prohibiting his employment on the waterfront until there are significant other proceedings which may or may not * * * take place during the life of the collective bargaining agreement.

First, the government must initiate the proceeding; second, the court must make the determination set forth in the consent decree, and [third,] the court

must embody that determination in an order to the NYSA.

Judge Sand further stated that "the law is clear that arbitrability is a question to be determined by the court, not by the arbitrator, and I believe that there are serious questions with respect to whether the agreement is presently arbitrable." Noting that Local 1814 wanted arbitration "so that all of the presumptions and deference normally accorded such an arbitration result" would attach, Judge Sand issued a preliminary injunction against the NYSA-Local 1814 arbitration pending the arguments (scheduled for January 9, 1992) on Local 1814's motion for an injunction against finalization of the consent decree and on the government's cross-motion to dismiss Local 1814's complaint.

I. *The district court denies Local 1814's motion for an injunction, permanently enjoins arbitration, and dismisses Local 1814's complaint.*

After hearing argument at the January 9, 1992 hearing involving the arbitration case, Judge Sand denied Local 1814's motion for an injunction, granted the government a permanent injunction of the arbitration, and dismissed Local 1814's complaint. Again, since Judge Sand ruled from the bench, we reprint the pertinent parts of his oral opinion:

> [T]he Court has before it two motions.
>
> One is the application by the government to stay a proposed arbitration between Local 1814 and related unions and the New York Shipping Association.
>
> The other is the motion by the unions to preclude submission to this Court of the proposed consent

decree between the government and the New York Shipping Association.

That proposed consent decree would contain an agreement by the Shipping Association which would contain, among other things in the agreement, [a term that NYSA would not] continue in employment a member of Local 1814 who was the subject of a court order determining that he was a present member of organized crime.

Now, the Court first addresses the claim that it lacks subject matter jurisdiction because an injunction would violate the provisions of the Norris-LaGuardia Act.

The Court rejects that claim, believing that it has jurisdiction not only under the RICO statute but the All Writs Statute, and the inherent power of the court to preserve its jurisdiction.

This last element is—that is, preservation of the Court's jurisdiction—is really the critical question.

The relationship between a collective bargaining agreement and a consent decree between an employer and the government is a very delicate matter.

The question which this Court finds to be the dispositive [one] is not how that relationship should be resolved, but whether consideration should be given by any tribunal to the competing interests espoused by the unions, on behalf of their members in preservation of employment, and that of the government, in rooting out from waterfront employment members who are present members of organized crime.

This Court has yet to determine whether the proposed consent decree should be signed and will not make that determination until there is a full hearing on the issues presented by that consent decree, including the questions of whether its provisions would constitute an unwarranted, unnecessary, or inappropriate intrusion into the rights of union members, and the further question of whether there would be adequate procedural safeguards, consistent with due process, to protect the rights of individual union members alleged to be presently members of organized crime prior to an order that they no longer be continued in employment.

Local 1814 and the associated unions have initiated an arbitration alleging that the New York Shipping Association's entry into the consent decree constitutes a present violation of the terms of the Collective Bargaining Agreement, and the question is whether that arbitration should be allowed to proceed and be concluded prior to such time as this Court considers and determines whether or not to approve the consent decree.

There is considerable reluctance on the part of any court to enjoin an arbitration, and there are many cases that have been and can be cited for that proposition. In the usual context, every presumption is engaged [in] favor of the arbitration.

That is not the issue presented this afternoon.

The question which would be before the arbitrator—and which he has assured the parties that he would determine immediately upon completion of their presentation—is the simple issue of whether, looking at the four corners of the Collective Bar-

gaining Agreement, one can say whether it does or does not authorize the discharge of a Local 1814 member because he is presently a member of organized crime.

Counsel have acknowledged, as indeed the cases compel them to do, that it would be beyond the scope of the arbitrator's reference and authority to consider public-interest questions, to consider the RICO context out of which the proposed consent decree emerges, to consider the record adduced after 42 trial days in this case, in short, to consider anything other than the simple question to which I have made reference.

It is only this Court that can make that determination. It is not an arbitrable determination.

The significant issues which will be present when the merits of the consent decree are submitted to the Court are not arbitrable issues, and there is no arbitrable issue raised in the proposed arbitration.

One might well say, "Well, then, what difference does it make? Why not let the arbitration go forward because it would be a nullity?" And, indeed, that is a question that is giving the Court some pause, but then one has to ask, "What is this really all about? Why has there been so much concern on the part of counsel as to the sequence of events?"

It is clear that the reason why you are all here and why the matter has generated so much paper and discussion and analysis is that the parties, with some foundation in the law—the law which is currently under reexamination by the Second Circuit—attach significance to the sequence of events, and that once

an arbitration determination has been made, a claim can be made that it has certain preclusive consequences.

Because this Court believes that it would be a total distortion of the significant issues raised by the proposed consent decree to consider the question whether it would constitute a violation of the Collective Bargaining Agreement apart from the RICO context of this case, and because the Court believes that the Federal District Court is the only tribunal which can engage in the balancing of the respective rights implicated by the consent decree, and believes that it should do so untrammeled by an arbitration decision that would be rendered on an issue which this Court has found to be a nonarbitrable issue, the Court makes permanent the restraint issued on December 20, and enjoins the conduct of the proposed arbitration, and denies the motion by the unions for a reverse *Boys' Market[s]* injunction to enjoin the submission of the proposed consent decree to the Court.

On January 16, 1992, Judge Sand signed the order and judgment granting the government's requested injunction, denying Local 1814's requested injunction, and dismissing Local 1814's complaint. This expedited appeal followed.

DISCUSSION

On appeal, Local 1814 has abandoned its request for a "reverse *Boys Markets* injunction" and relies on its argument that the Norris-LaGuardia Act, 47 Stat. 70 (1932) (codified at 29 U.S.C. §§ 101-115), strips the district

court of jurisdiction to enjoin this labor arbitration. This jurisdictional argument necessarily embraces a number of sub-issues, each of which we address in turn.

A. *The Norris-LaGuardia Act: an overview.*

In the earliest part of the twentieth century, the injunction was a potent weapon wielded by management against labor groups. To defeat the organizational attempts of labor unions, management frequently charged the labor unions in federal court with conspiracy to violate the Sherman Act, 15 U.S.C. § 1. While congress had in 1914 sought by § 20 of the Clayton Act, 29 U.S.C. § 52, to limit the jurisdiction of federal courts in cases involving labor disputes, the efficacy of that section had been largely undermined by judicial decisions, *e.g.*, *Duplex Printing Press Co. v. Deering*, 254 U.S. 443 (1921). *See generally Milk Wagon Drivers' Union, Local 753 v. Lake Valley Farm Products, Inc.*, 311 U.S. 91, 102 (1940). "The result was a large number of sweeping decrees, often issued *ex parte*, drawn on an *ad hoc* basis without regard to any systematic elaboration of national labor policy." *Boys Markets, Inc. v. Retail Clerk's Union, Local 770*, 398 U.S. 235, 250 (1970).

In order to "further * * * extend the prohibitions of the Clayton Act respecting the exercise of jurisdiction by federal courts and to obviate the results of the judicial construction of that Act," *New Negro Alliance v. Sanitary Grocery Co.*, 303 U.S. 552, 562 (1938), congress in 1932 passed the Norris-LaGuardia Act, "to bring some order out of the industrial chaos that had developed and to correct the abuses that had resulted from the interjection of the federal judiciary into union-management disputes on the behalf of management." *Boys Markets*, 398 U.S. at 251. The result was § 1 of the Norris-LaGuardia Act:

> No court of the United States * * * shall have jurisdiction to issue any restraining order or temporary or permanent injunction in a case involving or growing out of a labor dispute except in a strict conformity with the provisions of this chapter; nor shall any such restraining order or temporary or permanent injunction be issued contrary to the public policy declared in this chapter.

29 U.S.C. § 101. The "public policy declared in this chapter" is set forth in section 2 of the act, 29 U.S.C. § 102, and is to be used "[i]n the interpretation of this chapter and in determining the jurisdiction and authority of the courts of the United States":

> Whereas under prevailing economic conditions, developed with the aid of governmental authority for owners of property to organize in the corporate and other forms of ownership association, the individual unorganized worker is commonly helpless to exercise actual liberty of contract and to protect his freedom of labor, and thereby to obtain acceptable terms and conditions of employment, wherefore, though he should be free to decline to associate with his fellows, it is necessary that he have full freedom of association, self-organization, and designation of representatives of his own choosing, to negotiate the terms and conditions of his employment, and that he shall be free from the interference, restraint, or coercion of employers of labor, or their agents, in the designation of such representatives or in self-organization or in other concerted activities for the purpose of collective bargaining or other mutual aid and protection; therefore, the following definitions of

> and limitations upon the jurisdiction and authority of the courts of the United States are enacted.

29 U.S.C. § 102.

The Norris-LaGuardia Act is not to "be read in a spirit of mutilating narrowness", *United States v. Hutchison*, 312 U.S. 219, 235 (1941); rather, it is to be given "a broad interpretation". *Jacksonville Bulk Terminals, Inc. v. International Longshoremen's Ass'n*, 457 U.S. 702, 708 (1982). *See also Jou-Jou Designs, Inc. v. International Ladies Garment Workers Union*, 643 F.2d 905, 911 (2d Cir. 1981). Despite these general principles of broad application, the Supreme Court has recognized that a district court does have jurisdiction to grant injunctive relief under at least two decisional exceptions to the act: (1) when the Norris-LaGuardia Act must be reconciled with the mandates of a specific federal statute, *Boys Markets*, 398 U.S. at 251; *Jacksonville Bulk Terminals*, 457 U.S. at 717 n.17, and (2) when injunctive relief is necessary to accommodate Norris-LaGuardia's "strong policy favoring arbitration." *Id. See Boys Markets*, 398 U.S. at 252-53. *Cf. Buffalo Forge Co. v. United Steelworkers of America*, 428 U.S. 397, 412-23 (1976) (although the issue of whether a strike violated "no-strike clause" in collective bargaining agreement was arbitrable, an injunction of the strike itself not allowed by Norris-LaGuardia).

Local 1814 argues that since this case involves a "labor dispute" as defined in 29 U.S.C. § 113(c), and does not fall within any of the established exceptions to Norris-LaGuardia, Judge Sand acted in excess of his jurisdiction. In rejoinder, both NYSA and the government argue that there is no "labor dispute" here for two reasons. First, the "dispute" will not ripen into an arbitrable "dispute" until Judge Sand signs the consent decree. Second, any "dis-

pute" there might be is not a "labor dispute", but rather a "RICO dispute". Both NYSA and the government additionally argue that RICO serves an important federal policy, to which the Norris-LaGuardia Act and its underlying policies should yield. We address each of these contentions below.

B. *Is the dispute arbitrable?*

A threshold issue is whether the dispute between Local 1814 and NYSA is arbitrable; if it is not, our inquiry ends, because any injunction that might issue would enjoin an arbitration which need not occur. *See Boys Markets*, 398 U.S. at 247-49.

The question of arbitrability "is undeniably an issue for judicial determination". *AT & T Technologies, Inc. v. Communications Workers of America*, 475 U.S. 643, 649 (1986); *John Wiley & Sons, Inc. v. Livingston*, 376 U.S. 543, 547 (1964); *Woodcrest Nursing Home v. Local 144, Hotel, Hospital, Nursing Home & Allied Services Union*, 788 F.2d 894, 897 (2d Cir. 1986) (*per curiam*). Arbitration is a contractual right, and a party cannot be required to submit to arbitration a dispute which is not contemplated as arbitrable by the contract. *AT & T*, 475 U.S. at 648; *United Steelworkers of America v. Warrior & Gulf Navigation Co.*, 363 U.S. 574, 582 (1960); *McAllister Bros., Inc. v. A & S Transp. Co.*, 621 F.2d 519, 522 (2d Cir. 1980).

In deciding the contractual issue of arbitrability, courts must take pains not to rule on the merits of the underlying dispute:

> Whether 'arguable' or not, indeed even if it appears to the court to be frivolous, the union's claim that the employer has violated the collective-bargaining

> agreement is to be decided, not by the court asked to order arbitration, but as the parties have agreed, by the arbitrator.

AT & T, 475 U.S. at 649-50. Finally, where the contract contains an arbitration clause, courts should indulge a presumption in favor of arbitrability, which may only be overcome if "it may be said with positive assurance that the arbitration clause is not susceptible of an interpretation that covers the asserted dispute." *Id.* at 650 (quoting *United Steelworkers of America v. Warrior & Gulf*, 363 U.S. at 582-83) (internal quotations omitted).

The collective bargaining agreement involved here provides for arbitration of "[a]ny grievance, dispute, complaint or claim arising out of or relating to this agreement". Local 1814 asks us to read this provision with breadth enough to encompass its disagreement with NYSA. The government and NYSA maintain that since consent judgments derive their authority from the imprimatur of the court, *see, e.g.*, *Kozlowski v. Coughlin*, 871 F.2d 241, 245 (2d Cir. 1989), and since the consent judgment sought here will require additional proceedings and could even be disapproved by the district court, it could not possibly create any conflict with the collective bargaining agreement at least until it is signed. Although the district court did not ground its holding on this issue, it did note the existence of "serious questions with respect to whether the agreement is presently arbitrable".

Despite Judge Sand's reservations, we conclude that this dispute is ripe for arbitration under any fair reading of the arbitration clause. NYSA has already agreed to the terms of the consent judgment, and thereby has taken an affirmative step toward becoming bound by a judgment that will require it to do acts which, arguably, would vio-

late the collective bargaining agreement by creating three new grounds for discharge of a union employee—(1) violating RICO, (2) being a member of an organized crime group, or (3) aiding or abetting a person in groups (1) or (2). None of these three grounds is mentioned in the collective bargaining agreement.

A contracting party has the right to expect that the other party will do nothing substantially to impair the expectation of performance, *see, e.g., Equitable Trust Co. v. Western Pac. Ry.*, 244 F. 485, 502 (S.D.N.Y. 1917) (L. Hand, J.), *aff'd*, 250 F. 327 (2d Cir.), *cert. denied*, 246 U.S. 672 (1918); *cf.* U.C.C. §§ 2-610, 2-611, and the settlement which NYSA has entered into with the government might have the effect of impairing NYSA's performance. Such an "anticipatory breach" (or, rather, breach by anticipatory repudiation) of a collective bargaining agreement would undoubtedly be ripe for judicial decision in a garden-variety breach of contract case. Taking into account the presumption in favor of arbitrability, we conclude that this contractual dispute, although by no means "garden variety", is a "grievance, dispute, complaint, or claim arising out of or relating to" the collective bargaining agreement between Local 1814 and NYSA.

While the government and NYSA both cite cases holding disputes "unripe" for arbitration, each case is readily distinguishable on its facts. In *Chicago Typographical Union No. 16 v. Chicago Sun-Times, Inc.*, 860 F.2d 1420 (1988), the seventh circuit was called upon to interpret a clause requiring arbitration of "controversies" and "disagreements" over the proper interpretation and application of the contract, *id.* at 1425, and to apply that clause to the union's complaint that it had "reason to believe" the newspaper had interpreted a term in the collective bar-

gaining agreement in a fashion contrary to that espoused by the union. *Id.* at 1422.

The ninth circuit, in *Alpha Beta Co. v. Retail Store Employees Union, Local 428*, 671 F.2d 1247 (1982), also cited by the government and NYSA, was faced with a similar challenge. There, the union and the employer had entered into a settlement agreement regarding the proper interpretation of a clause in their contract. The settlement agreement itself, however, did not have an arbitration provision. The ninth circuit concluded that the "dispute" involved an interpretation of the settlement agreement, *i.e.*, an interpretation of the interpretation; thus, there was no dispute "involving or arising out of the meaning, interpretation, application or alleged violation of" the *contract*, and thus nothing in the contract to arbitrate. *Id.* at 1250.

In contrast to *Chicago Typographical Union*, Local 1814 has much more than "reason to believe" that NYSA will enter into a consent judgment embracing certain terms; indeed, NYSA has gone as far as it can by agreeing to the proposed terms of the consent judgment. And, in contrast to *Alpha Beta*, the contract which is alleged to have been breached here *does* contain an arbitration provision—an extremely broad provision, at that. We thus conclude that the dispute between NYSA and Local 1814 is arbitrable. We next consider the specific provisions of the Norris-LaGuardia Act.

C. *Is this a "labor dispute"?*

Does this dispute fall within the meaning of "labor dispute" under Norris-LaGuardia? This issue, too, is potentially dispositive of Local 1814's challenge. We start with the words of § 13 of the Norris-LaGuardia Act:

(a) A case shall be held to involve or to grow out of a labor dispute when the case involves persons who are engaged in the same industry, trade, craft, or occupation; or have direct or indirect interests therein; or who are employees of the same employer; or who are members of the same or an affiliated organization of employers or employees; whether such dispute is (1) between one or more employers or associations of employers and one or more employees or associations of employees; (2) between one or more employers and associations of employers and one or more employers or associations of employers; or (3) between one or more employees or associations of employees and one or more employees or associations of employees; or when the case involves any conflicting or competing interests in a "labor dispute" (as defined in this section) of "persons participating or interested" therein (as defined in this section).

(b) A person or association shall be held to be a person participating or interested in a labor dispute if relief is sought against him or it, and if he or it is engaged in the same industry, trade, craft, or occupation in which such dispute occurs, or has a direct or indirect interest therein, or is a member, officer, or agent of any association composed in whole or in part of employers or employees engaged in such industry, trade, craft, or occupation.

(c) The term "labor dispute" includes any controversy concerning terms and conditions of employment, or concerning the association or representation of persons in negotiating, fixing, maintaining, changing, or seeking to arrange terms or conditions of employment, regardless of whether or not the dis-

> putants stand in the proximate relation of employer and employee.

29 U.S.C. § 113(a)-(c).

Local 1814 argues that its dispute with NYSA is a "controversy concerning terms and conditions of employment" since the consent judgment, if approved, will alter the provisions of the collective bargaining agreement relating to, *inter alia*, discharge. NYSA, bootstrapping onto its arbitrability argument, attacks Local 1814's contention by arguing that since no ripe "dispute" exists for arbitration, no "labor *dispute*" exists for purposes of the Norris-LaGuardia Act. Since we have already determined that a ripe "dispute" under general principles of arbitrability does in fact exist, this major premise of NYSA's argument falls by the wayside.

The government, however, offers a different, largely semantic, analysis in support of the same conclusion. As intervenor-defendant, the government sees this case not as a "*labor* dispute", but as a "*RICO* dispute" to which the Norris-LaGuardia Act simply does not apply. The fundamental flaw with this argument, of course, is that many "RICO disputes" are also "labor disputes"—the categories are not mutually exclusive. We thus conclude that, on its face, the dispute between Local 1814 and NYSA falls within Norris-LaGuardia's definition of "labor dispute", as it involves "terms and conditions of employment".

1. "Labor dispute": the plain meaning.

The term "labor dispute" has a "broad meaning under the Norris-La Guardia Act". *Corporate Printing Co. v. New York Typographical Union No. 6*, 555 F.2d 18, 21 (2d Cir. 1977). *See Jacksonville Bulk Terminals*, 457 U.S. at 711 ("The Act merely requires that the case involve 'any'

labor dispute."). Critical to whether a dispute is a "labor dispute" is whether "the employer-employee relationship [is] the matrix of the controversy." *Columbia River Packers Ass'n, Inc. v. Hinton*, 315 U.S. 143, 147 (1942).

In the Norris-LaGuardia Act, congress defined "labor dispute" in terms that "no longer leave room for doubt." *United States v. Hutcheson*, 312 U.S. at 234. Section 13 of Norris-LaGuardia was obviously written with bipolar (*i.e.*, employee-employer, employer-employer, and employee-employee) disputes in mind. *See* 29 U.S.C. § 113(a)(1)-(3). What we are presented with, however, is fairly characterized not as a bipolar, but as a triangular dispute, with a group of employees (Local 1814), a group of employers (NYSA), and the government at the respective corners of the triangle. While the government urges that, in order to determine the nature of the dispute at issue, we should look only at one leg of the triangle, the one representing the RICO-born "dispute" between NYSA and the government, we cannot ignore the fact that this case focuses also upon another leg of that triangle, *i.e.*, the one representing the contractual dispute between Local 1814 and NYSA.

As we have noted above, Local 1814's complaint alleges an anticipatory breach of the collective bargaining agreement between Local 1814 and NYSA; this is surely a "controversy concerning terms and conditions of employment," 29 U.S.C. § 113(c), in which "the employer-employee relationship is the matrix" of the dispute. *See Jacksonville Bulk Terminals*, 457 U.S. at 713; *Columbia River Packers*, 315 U.S. at 147. The government's intervention does not, by itself, alter the essential character of this dispute, which is between an employers' group and an employees' group, *see* 29 U.S.C. § 113(a)(1) ("between one or more employers or associations of

employers and one or more employees or associations of employees"), over the proper interpretation of their collective bargaining agreement.

Our reading hews close to recent Supreme Court decisions that command strict adherence to the literal definition of "labor dispute". *See Burlington Northern R.R. v. Brotherhood of Maintenance of Way Employees*, 481 U.S. 429, 441-42 (1987); *Jacksonville Bulk Terminals*, 457 U.S. at 112-13. Although departures from strict adherence to statutory language are justified in "rare and exceptional circumstances", *see, e.g., Tennessee Valley Authority v. Hill*, 437 U.S. 153, 187 n.33 (1978) (quoting *Crooks v. Harrelson*, 282 U.S. 55, 60 (1930)), normally for this court to narrow the statutory definition of "labor dispute" would run contrary to congress's, as well as the Supreme Court's, commands. *See Marine Cooks & Stewards v. Panama S.S. Co.*, 362 U.S. 365, 369 (1960). We thus conclude that the instant controversy falls within the class of cases defined by congress as "labor disputes" under the Norris-LaGuardia Act, since it concerns "terms and conditions of employment". 29 U.S.C. § 113(c). We next consider whether this labor dispute falls into one of the established decisional exceptions to the act.

2. "Labor dispute": the decisional exceptions.

As we have noted above, the Supreme Court has recognized two narrow decisional exceptions to the jurisdiction-stripping provisions of the Norris-LaGuardia Act. First, the federal courts have jurisdiction to issue injunctions in "labor disputes" when necessary to accommodate Norris-LaGuardia's "strong policy favoring arbitration". *Jacksonville Bulk Terminals*, 457 U.S. at 717 n.17; *Boys Markets*, 398 U.S. at 252-53. Second, the federal courts have such equity jurisdiction when necessary to reconcile

Norris-LaGuardia with the mandates of a specific federal statute. *Jacksonville Bulk Terminals*, 457 U.S. at 717 n.17; *National Ass'n of Letter Carriers v. Sombrotto*, 449 F.2d 915, 919 (2d Cir. 1971) (Friendly, J.).

As an initial matter, it is noteworthy that Local 1814 commenced this case seeking a "reverse *Boys Markets* injunction"—*i.e.*, an injunction designed to further the Norris-LaGuardia Act's strong policies favoring arbitration, *see, e.g.*, *Niagara Hooker Employees Union v. Occidental Chem. Corp.*, 935 F.2d 1370, 1376-77 (2d Cir. 1991)—against NYSA, to keep it from undertaking further steps toward finalizing the consent judgment. However, the district court not only denied Local 1814 this relief; it also concluded that it had jurisdiction under the RICO statute (utilizing its concomitant powers to preserve its jurisdiction under the All Writs Act) to enjoin the arbitration because RICO—a specific federal statute designed to further an overriding congressional concern—falls within the second decisional exception "carved out" of the Norris-LaGuardia Act. Although Local 1814 has abandoned, on appeal, its request for a "reverse *Boys Markets* injunction", it nevertheless argues that in the circumstances presented by this case, only an injunction favoring arbitration, and not an injunction against arbitration, would properly be within the district court's jurisdiction. *See* Local 1814 brief at 18 (citing *Camping Const. Co. v. District Council of Iron Workers*, 915 F.2d 1333, 1348 (9th Cir. 1990), *cert. denied*, 111 S. Ct. 1684 (1991); *In re Dist. No. 1—Pacific Coast Dist., Marine Engineers' Beneficial Ass'n*, 723 F.2d 70, 77-78 (D.C. Cir. 1983); and *Jou-Jou Designs*, 643 F.2d at 911).

To properly address Local 1814's argument, we turn to the history of RICO, as well as to the statute itself. To begin with, Local 1814 ignores the important interrela-

tionship between RICO and labor activities. RICO, which was adopted in 1970 (38 years after Norris-LaGuardia), establishes a strong congressional policy of purging society of the menace of organized crime. Indeed, the Organized Crime Control Act of 1970, Pub. L. No. 91-452, 84 Stat. 922 (Title IX of which is RICO, codified at 18 U.S.C. § 1961 *et seq.*), states the congressional finding that organized crime's "money and power are increasingly used to infiltrate and corrupt legitimate business *and labor unions* and to subvert and corrupt our democratic processes" (emphasis added); congress intended to eradicate organized crime "by strengthening the legal tools in the evidence-gathering process, by establishing new penal prohibitions, and by providing enhanced sanctions *and new remedies* to deal with the unlawful activities of those engaged in organized crime." *Id.* (emphasis added). *See United States v. Turkette*, 452 U.S. 576, 586 (1981) ("existing law, state and federal, was not adequate to address the problem" of organized crime).

Congress was aware that organized crime "quietly continues to infiltrate and corrupt organized labor." 116 Cong. Rec. 585 (1970) (statement of Senator McClellan). The purpose of the Organized Crime Control Act of 1970 was "to enable the Federal Government to address a large and seemingly neglected problem", which was "of national dimensions." *Turkette*, 452 U.S. at 586. "Trucking, construction, and *waterfront entrepeneurs* have been persuaded for labor peace to countenance gambling, loansharking and pilferage. As the takeover of organized crime cannot be tolerated in legitimate business, so, too, it cannot be tolerated here." S. Rep. No. 617, 91st Cong., 1st Sess. at 78 (emphasis added). Indeed, four of the specifically-enumerated predicate acts of racketeering activity defined under RICO are: embezzlement of

employee plan funds, employee benefit plan kickbacks, illegal labor payoffs, and embezzlement of union funds. *See* 18 U.S.C. § 1961(1)(B), (C) (citing, respectively, 18 U.S.C. §§ 664, 1954; 29 U.S.C. §§ 186, 501(c)). These predicate acts occur only when labor is involved.

In RICO, congress adopted special tools to aid in the eradication of organized crime. First, it provided for liberal construction, in derogation of the general principle that penal statutes are to be strictly construed, *see* Reed Dickerson, *The Interpretation and Application of Statutes* 206, 210 (1975), in order "to effectuate [RICO's] remedial purposes." Organized Crime Control Act of 1970, Pub. L. 91-452, § 904(a), 84 Stat. 922, 947. Second, congress gave the district courts "*jurisdiction* to prevent and restrain violations of section 1962 of this chapter by issuing appropriate orders". 18 U.S.C. § 1964(a) (emphasis added). Third, it included a special provision for the attorney general to bring civil actions such as the civil RICO action underlying this case. *See* 18 U.S.C. § 1964(b). Once the district court acquires jurisdiction over the subject matter of, and the parties to, the litigation, "the All Writs Act [28 U.S.C. § 1651] authorizes a federal court to protect that jurisdiction". *United States v. International Bhd. of Teamsters*, 907 F.2d 277, 281 (2d Cir. 1990).

We recognize that in all matters of statutory interpretation, we are ultimately looking for the intent of congress, *Farley v. Metro-North Commuter R.R.*, 865 F.2d 33, 33 (2d Cir. 1989), and when we are interpreting seemingly-contradictory statutes, this task is especially sensitive. The question we must answer here is: When it enacted the Organized Crime Control Act of 1970 in general, and RICO in particular, did congress intend that Norris-LaGuardia's 60-year-old, general prohibition against

injunctions in "labor disputes" should bar relief of the type proposed in the case now before us? Our answer is "no".

We "are not at liberty to pick and choose among congressional enactments, and when two statutes are capable of co-existence, it is the duty of the courts, absent a clearly expressed congressional intention to the contrary, to regard each as effective." *Morton v. Mancari*, 417 U.S. 535, 551 (1974). *See also Romano v. Luther*, 816 F.2d 832, 840 (2d Cir. 1987). We must give both Norris-LaGuardia and RICO full effect, "if we can do so while preserving their sense and purpose." *Watt v. Alaska*, 451 U.S. 259, 267 (1981). But if we cannot, we must resort to other principles of statutory elucidation. Fundamental among these principles is that "[w]here there is no clear intention otherwise, a specific statute will not be controlled or nullified by a general one, regardless of the priority of enactment." *Morton v. Mancari*, 417 U.S. at 550-51.

It is clear we cannot give full literal effect to both statutes. However, the labor-specific predicate racketeering acts specified in the RICO statute, the express grants of jurisdiction to district courts and of power to the attorney general in 18 U.S.C. § 1964, as well as legislative findings and history addressing the infiltration of labor unions by organized crime groups, all lead us to conclude that congress anticipated that RICO injunctions would extend to some "labor disputes". "Congress was well aware that it was entering a new domain of federal involvement through the enactment of [RICO]." *Turkette*, 452 U.S. at 586.

When an important federal policy would be "imperiled if equitable remedies were not available to implement it",

the Norris-LaGuardia Act's "policy of nonintervention by the federal courts should yield to the successful implementation" of the important federal policy. *Boys Markets*, 398 U.S. at 252. Granted, *Boys Markets* allowed an injunction in a "labor dispute" to accommodate policies *favoring* arbitration, *id.* at 252-53; but Norris-LaGuardia has also been read so as to "accommodate the competing demands of the [Railway Labor Act]", *see, e.g., Burlington Northern*, 481 U.S. at 445, as well as to accommodate § 301(a) of the Labor-Management Relations Act. *See, e.g., Local 2750, Lumber & Sawmill Workers Union v. Cole*, 663 F.2d 983, 987 (9th Cir. 1981).

As a general rule, "[t]he prohibition of the [Norris-LaGuardia Act] must give way when necessary to enforce a duty imposed by another statute", *Pittsburgh & Lake Erie R.R. Co. v. Railway Labor Executives' Ass'n*, 491 U.S. 490, 514 (1989); so must the general prohibitions on equity jurisdiction contained in the Norris-LaGuardia Act give way to the more specific grant of such jurisdiction under RICO. More specifically, the Norris-LaGuardia anti-injunction provision must give way to the compelling governmental interest of eliminating the hold of organized crime on labor unions as contemplated by RICO. Enforcement of RICO's policies through the All Writs Act is, therefore, both necessary and proper, even when it results in an injunction against arbitrating the "labor dispute" between Local 1814 and NYSA.

A similar approach was taken by Judge Friendly in *Letter Carriers*, where he sought to reconcile the tensions between a literal reading of the Norris-LaGuardia Act and certain provisions of the subsequently-enacted Landrum-Griffin Act. He concluded that by reading "the Norris-LaGuardia Act as *pro tanto* amended by the recent trusteeship provisions [of the Landrum-Griffin Act], we

ensure the viability of the latter enactment" and create only a limited intrusion on Norris-LaGuardia's broad prohibition against injunctions; to hold otherwise "would be to render the trusteeship scheme established by Congress in large measure nugatory." *Letter Carriers*, 449 F.2d at 919. *Accord Drywall Tapers & Painters v. Operative Plasterers' & Cement Masons Int'l*, 537 F.2d 669, 673-74 (2d Cir. 1976). These views apply equally to the interplay between Norris-LaGuardia and RICO. Were we to hold other than we do, RICO's broadly-construed remedial powers would have virtually no vitality in a labor setting. By holding as we do, we give full effect to the specific mandates and policies of the RICO statute while making only a minor intrusion into Norris-LaGuardia's broad prohibition against injunctions in "labor disputes". Congress intended this result.

Moreover, our recent *Star Market* decision supports this conclusion. There, we noted that

> collective bargaining agreements and [a RICO-grounded] Consent Decree address different problems and serve different purposes. The former governs the daily relations between particular employers and their employees, while the latter is an attempt to rebuild the infrastructure of an entire national labor organization [after eradicating the influence of organized crime].

Star Market, 954 F.2d at 810. *Star Market* stands for the proposition that, if presented with an attempted "RICO-reorganization" of a labor union, arbitrators (who have "narrowly circumscribed" professional skills) cannot properly consider the transcendent nature of the national public policy concerns presented by the dispute; thus, in

those circumstances, the usual deference paid to an arbitration result does not attach. *Id.* at 809-10.

Even though we held in *Star Market* that an arbitration result would create no presumptions and would merit no deference by the district court, we nevertheless thought it prudent that the district court and the court-appointed officers should "remain free to complete their task unencumbered by collateral arbitration results." *Id.* at 810. The need for the broad remedies authorized by the RICO statute merits similar freedom.

Our holding today is narrow. We do not hold that "mere unlawfulness under any law is enough to remove the strictures of the Norris-LaGuardia Act". *Order of R.R. Telegraphers v. Chicago & N.W. Ry. Co.*, 362 U.S. 330, 339 n.15 (1960). We hold only that when injunctive relief in what would otherwise be a "labor dispute" is properly sought to further RICO's remedial purposes, the anti-injunction provisions of Norris-LaGuardia are inapplicable, and a federal court has jurisdiction to grant injunctive relief.

CONCLUSION

The judgment of the district court is affirmed.

APPENDIX B

APPENDIX B

STATUTORY PROVISIONS

NORRIS LAGUARDIA ACT, 29 U.S.C. § 101 ET. SEQ.

§ 101. Issuance of restraining orders and injunctions; limitation; public policy

No court of the United States, as defined in this chapter, shall have jurisdiction to issue any restraining order or temporary or permanent injunction in a case involving or growing out of a labor dispute, except in a strict conformity with the provisions of this chapter; nor shall any such restraining order or temporary or permanent injunction be issued contrary to the public policy declared in this chapter.

§ 107. Issuance of injunctions in labor disputes; hearing; findings of court; notice to affected persons; temporary restraining order; undertakings

No court of the United States shall have jurisdiction to issue a temporary or permanent injunction in any case involving or growing out of a labor dispute, as defined in this chapter, except after hearing the testimony of witnesses in open court (with opportunity for cross-examination) in support of the allegations of a complaint made under oath, and testimony in opposition thereto, if offered, and except after findings of fact by the court, to the effect—

(a) That unlawful acts have been threatened and will be committed unless restrained or have been committed and will be continued unless restrained, but no injunction or temporary restraining order shall be issued on account of any threat or unlawful act excepting against the person or persons, association, or organization making the threat or committing the unlawful act or actually authorizing or ratifying the same after actual knowledge thereof;

(b) That substantial and irreparable injury to complainant's property will follow;

(c) That as to each item of relief granted greater injury will be inflicted upon complainant by the denial of relief than will be inflicted upon defendants by the granting of relief;

(d) That complainant has no adequate remedy at law; and

(e) That the public officers charged with the duty to protect complainant's property are unable or unwilling to furnish adequate protection.

Such hearing shall be held after due and personal notice thereof has been given, in such manner as the court shall direct, to all known persons against whom relief is sought, and also to the chief of those public officials of the county and city within which the unlawful acts have been threatened or committed charged with the duty to protect complainant's property: *Provided, however,* That if a complainant shall also allege that, unless a temporary restraining order shall be issued without notice, a substantial and irreparable injury to complainant's property will be unavoidable, such a temporary restraining order may be issued upon testimony under oath, sufficient, if sustained, to justify the court in issuing a temporary injunction upon a hearing after notice. Such a temporary restraining order shall be effective for no longer than five days and shall become void at the expiration of said five days. No temporary restraining order or temporary injunction shall be issued except on condition that complainant shall first file an undertaking with adequate security in an amount to be fixed by the court sufficient to recompense those enjoined for any loss, expense, or damage caused by the improvident or erroneous issuance of such order or injunction, including all reasonable costs (together with a reasonable attorney's fee) and expense of defense against the order or against the granting of any injunctive relief sought in the same proceeding and subsequently denied by the court.

The undertaking mentioned in this section shall be understood to signify an agreement entered into by the complainant and

the surety upon which a decree may be rendered in the same suit or proceeding against said complainant and surety, upon a hearing to assess damages of which hearing complainant and surety shall have reasonable notice, the said complainant and surety submitting themselves to the jurisdiction of the court for that purpose. But nothing in this section contained shall deprive any party having a claim or cause of action under or upon such undertaking from electing to pursue his ordinary remedy by suit at law or in equity.

§ 113. Definitions of terms and words used in chapter

When used in this chapter, and for the purposes of this chapter —

(a) A case shall be held to involve or to grow out of a labor dispute when the case involves persons who are engaged in the same industry, trade, craft, or occupation; or have direct or indirect interests therein; or who are employees of the same employer; or who are members of the same or an affiliated organization of employers or employees; whether such dispute is (1) between one or more employers or associations of employers and one or more employees or associations of employees; (2) between one or more employers or associations of employers and one or more employers or associations of employers; or (3) between one or more employees or associations of employees and one or more employees or associations of employees; or when the case involves any conflicting or competing interests in a "labor dispute" (as defined in this section) of "persons participating or interested" therein (as defined in this section).

(b) A person or association shall be held to be a person participating or interested in a labor dispute if relief is sought against him or it, and if he or it is engaged in the same industry, trade, craft, or occupation in which such dispute occurs, or has a direct or indirect interest therein, or is a member, officer, or agent of any association composed in whole or in part of employers or employees engaged in such industry, trade, craft, or occupation.

(c) The term "labor dispute" includes any controversy concerning terms or conditions of employment, or concerning the association or representation of persons in negotiating, fixing, maintaining, changing, or seeking to arrange terms or conditions of employment, regardless of whether or not the disputants stand in the proximate relation of employer and employee.

(d) The term "court of the United States" means any court of the United States whose jurisdiction has been or may be conferred or defined or limited by Act of Congress, including the courts of the District of Columbia.

RACKETEER INFLUENCED AND CORRUPT ORGANIZATIONS ACT, 18 U.S.C. § 1961 ET SEQ.

§ 1961. Definitions

As used in this chapter —

(1) "racketeering activity" means (A) any act or threat involving murder, kidnaping, gambling, arson, robbery, bribery, extortion, dealing in obscene matter, or dealing in narcotic or other dangerous drugs, which is chargeable under State law and punishable by imprisonment for more than one year; (B) any act which is indictable under any of the following provisions of title 18, United States Code: Section 201 (relating to bribery), section 224 (relating to sports bribery), sections 471, 472, and 473 (relating to counterfeiting), section 659 (relating to theft from interstate shipment) if the act indictable under welfare funds), sections 891-894 (relating to extortionate credit transactions), section 1029 (relating to fraud and related activity in connection with access devices), section 1084 (relating to the transmission of gambling information), section 1341 (relating to mail fraud), section 1343 (relating to wire fraud), section 1344 (relating to financial institution fraud), sections 1461-1465 (relating to obscene matter), section 1503 (relating to obstruction of justice), section 1510 (relating to obstruction of criminal investigations), section 1511 (relating to the obstruction of State or

local law enforcement), section 1512 (relating to tampering with a witness, victim, or an informant), section 1513 (relating to retaliating against a witness, victim, or an informant), section 1951 (relating to interference with commerce, robbery, or extortion), section 1952 (relating to racketeering), section 1953 (relating to interstate transportation of wagering paraphernalia), section 1954 (relating to unlawful welfare fund payments), section 1955 (relating to the prohibition of illegal gambling businesses), section 1956 (relating to the laundering of monetary instruments), section 1957 (relating to engaging in monetary transactions in property derived from specified unlawful activity), section 1958 (relating to use of interstate commerce facilities in the commission of murder-for-hire), sections 2312 and 2313 (relating to interstate transportation of stolen motor vehicles), sections 2314 and 2315 (relating to interstate transportation of stolen property), section 2321 (relating to trafficking in certain motor vehicles or motor vehicle parts), sections 2341-2346 (relating to trafficking in contraband cigarettes), sections 2421-24 (relating to white slave traffic), (C) any act which is indictable under title 29, United States Code, section 186 (dealing with restrictions on payments and loans to labor organizations) or section 501(c) (relating to embezzlement from union funds), (D) any offense involving fraud connected with a case under title 11, fraud in the sale of securities, or the felonious manufacture, importation, receiving, concealment, buying, selling, or otherwise dealing in narcotic or other dangerous drugs, punishable under any law of the United States, or (E) any act which is indictable under the Currency and Foreign Transactions Reporting Act;

(2) "State" means any State of the United States, the District of Columbia, the Commonwealth of Puerto Rico, any territory or possession of the United States, any political subdivision, or any department, agency, or instrumentality thereof;

(3) "person" includes any individual or entity capable of holding a legal or beneficial interest in property;

(4) "enterprise" includes any individual, partnership, corporation, association, or other legal entity, and any union or group of individuals associated in fact although not a legal entity;

(5) "pattern of racketeering activity" requires at least two acts of racketeering activity, one of which occurred after the effective date of this chapter and the last of which occurred within ten years (excluding any period of imprisonment) after the commission of a prior act of racketeering activity;

(6) "unlawful debt" means a debt (A) incurred or contracted in gambling activity which was in violation of the law of the United States, a State or political subdivision thereof, or which is unenforceable under State or Federal law in whole or in part as to principal or interest because of the laws relating to usury, and (B) which was incurred in connection with the business of gambling in violation of the law of the United States, a State or political subdivision thereof, or the business of lending money or a thing of value at a rate usurious under State or Federal law, where the usurious rate is at least twice the enforceable rate;

(7) "racketeering investigator" means any attorney or investigator so designated by the Attorney General and charged with the duty of enforcing or carrying into effect this chapter;

(8) "racketeering investigation" means any inquiry conducted by any racketeering investigator for the purpose of ascertaining whether any person has been involved in any violation of this chapter or of any final order, judgment, or decree of any court of the United States, duly entered in any case or proceeding arising under this chapter;

(9) "documentary material" includes any book, paper, document, record, recording, or other material; and

(10) "Attorney General" includes the Attorney General of the United States, the Deputy Attorney General of the United States, the Associate Attorney General of the United States, any Assistant Attorney General of the United States, or any employee of the Department of Justice or any employee of any department or agency of the United States so designated by the Attorney General to carry out the powers conferred on the Attorney General by this chapter. Any department or agency so designated

may use in investigations authorized by this chapter either the investigative provisions of this chapter or the investigative power of such department or agency otherwise conferred by law.

§ 1962. **Prohibited activities**

(a) It shall be unlawful for any person who has received any income derived, directly or indirectly, from a pattern of racketeering activity or through collection of an unlawful debt in which such person has participated as a principal within the meaning of section 2, title 18, United States Code, to use or invest, directly or indirectly, any part of such income, or the proceeds of such income, in acquisition of any interest in, or the establishment or operation of, any enterprise which is engaged in, or the activities of which affect, interstate or foreign commerce. A purchase of securities on the open market for purposes of investment, and without the intention of controlling or participating in the control of the issuer, or of assisting another to do so, shall not be unlawful under this subsection if the securities of the issuer held by the purchaser, the members of his immediate family, and his or their accomplices in any pattern or racketeering activity or the collection of an unlawful debt after such purchase do not amount in the aggregate to one percent of the outstanding securities of any one class, and do not confer, either in law or in fact, the power to elect one or more directors of the issuer.

(b) It shall be unlawful for any person through a pattern of racketeering activity or through collection of an unlawful debt to acquire or maintain, directly or indirectly, any interest in or control of any enterprise which is engaged in, or the activities of which affect, interstate or foreign commerce.

(c) It shall be unlawful for any person employed by or associated with any enterprise engaged in, or the activities of which affect, interstate or foreign commerce, to conduct or participate, directly or indirectly, in the conduct of such enterprise's affairs through a pattern of racketeering activity or collection of unlawful debt.

(d) It shall be unlawful for any person to conspire to violate any of the provisions of subsection (a), (b), or (c) of this section.

§ 1964. Civil remedies

(a) The district courts of the United States shall have jurisdiction to prevent and restrain violations of section 1962 of this chapter by issuing appropriate orders, including, but not limited to: ordering any person to divest himself of any interest, direct or indirect, in any enterprise; imposing reasonable restrictions on the future activities or investments of any person, including, but not limited to, prohibiting any person from engaging in the same type of endeavor as the enterprise engaged in, the activities of which affect interstate or foreign commerce; or ordering dissolution or reorganization of any enterprise, making due provision for the rights of innocent persons.

(b) The Attorney General may institute proceedings under this section. Pending final determination thereof, the court may at any time enter such restraining orders or prohibitions, or take such other actions, including the acceptance of satisfactory performance bonds, as it shall deem proper.

(c) Any person injured in his business or property by reason of a violation of section 1962 of this chapter may sue therefor in any appropriate United States district court and shall recover threefold the damages he sustains and the cost of the suit, including a reasonable attorney's fee.

(d) A final judgment or decree rendered in favor of the United States in any criminal proceeding brought by the United States under this chapter shall estop the defendant from denying the essential allegations of the criminal offense in any subsequent civil proceeding brought by the United States.

ALL WRITS ACT, 28 U.S.C. § 1651

§ 1651. Writs

(a) The Supreme Court and all courts established by Act of Congress may issue all writs necessary or appropriate in aid of their respective jurisdictions and agreeable to the usages and principles of law.

(b) An alternative writ or rule nisi may be issued by a justice or judge of a court which has jurisdiction.

Supreme Court, U.S.
FILED
AUG 21 1992
OFFICE OF THE CLERK

No. 92-144

IN THE

Supreme Court of the United States

OCTOBER TERM, 1992

LOCAL 1814, INTERNATIONAL LONGSHOREMEN'S ASSOCIATION, AFL-CIO,

Petitioner,

v.

NEW YORK SHIPPING ASSOCIATION, INC., AND UNITED STATES OF AMERICA,

Respondents.

ON PETITION FOR A WRIT OF CERTIORARI TO THE UNITED STATES COURT OF APPEALS FOR THE SECOND CIRCUIT

BRIEF OF RESPONDENT NEW YORK SHIPPING ASSOCIATION, INC. IN OPPOSITION TO PETITION

CONSTANTINE P. LAMBOS (Counsel of Record)
DONATO CARUSO
LAMBOS & GIARDINO
29 Broadway (9th Floor)
New York, New York 10006
(212) 943-2470

Attorneys for Respondent
New York Shipping Association, Inc.

Question Presented

Before addressing the questions framed in the petition, the following threshold question must first be decided:

> Does the Norris-LaGuardia Act prohibit enjoining an arbitration that threatens to impair the authority of a federal district court in a related civil action under the Racketeer Influenced and Corrupt Organizations Act ("RICO") to decide the validity of a consent judgment, if no arbitrable labor dispute can arise until the court in the related RICO action has adjudicated the meaning and validity of the consent judgment?

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Sup. Ct. R. 29.1 Corporate Disclosure Statement

Respondent New York Shipping Association, Inc. ("NYSA") is a New York not-for-profit, incorporated membership association of vessel carriers, stevedoring companies, and other maritime concerns which employ longshore workers at piers and waterfront terminals in the Port of New York and New Jersey. NYSA hereby certifies that it has no corporate parent or subsidiary.

No. 92-144

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OCTOBER TERM, 1992

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ON PETITION FOR A WRIT OF CERTIORARI TO THE UNITED STATES COURT OF APPEALS FOR THE SECOND CIRCUIT

BRIEF OF RESPONDENT NEW YORK SHIPPING ASSOCIATION, INC. IN OPPOSITION TO PETITION

INTRODUCTION

In a case involving the efforts of the United States Government to use the civil enforcement provisions of the Racketeer Influenced and Corrupt Organizations Act ("RICO"), 18 U.S.C.A. §§ 1961-1968 (West 1984 & Supp. 1992), to purge a handful of longshore union locals in a single port of the corrupting influence of organized crime, the Second Circuit prevented the Norris-LaGuardia Act ("NLGA"), 29 U.S.C.A. §§ 101-115 (West 1973 & Supp. 1992), from being misused to thwart the congressional mandates and policies promul-

gated by RICO. The decision of the court of appeals does not conflict with any decision of this Court or any other court and resolves an issue of limited scope and importance in a manner consistent with settled principles of law. Review by this Court, therefore, is unwarranted.

OPINION BELOW

The decision of the court of appeals in this case is now reported at 965 F.2d 1224.

STATEMENT OF THE CASE

RICO Action

In 1990 Respondent United States of America (hereinafter the "Government") instituted a civil RICO action against six locals of the International Longshoremen's Association, AFL-CIO ("ILA"), including petitioner, Local 1814, International Longshoreman's Association, AFL-CIO (herein "Local 1814"), various officers of these union locals, and various individuals alleged to be members of three La Cosa Nostra organized crime groups. *See United States* v. *Local 1804-1, Int'l Longshoremen's Ass'n*, No. 90-Civ.-0963 (LBS) (S.D.N.Y. filed Feb. 14, 1990) (herein "RICO Action"). Respondent New York Shipping Association, Inc. ("NYSA")[1] was dragged into the dispute not because NYSA or its members had committed any RICO violations but because the Government considered NYSA, albeit a nominal party, necessary to effectuate complete relief (A-4).[2] NYSA was designated in the RICO complaint as a class representative of employers on the waterfront (A-4). The complaint asked for the issuance of a permanent injunction barring individual defendants and

[1] NYSA is a New York not-for-profit, incorporated membership association of vessel carriers, stevedoring companies, and other maritime concerns. NYSA's members employ longshoremen and related craft employees at piers and waterfront terminals to handle waterborne freight transported to and from the Port of New York and New Jersey (hereinafter "Port"). NYSA is a multiemployer bargaining representative, which negotiates and administers on behalf of its members collective bargaining agreements with the ILA, establishing the terms and conditions of employment for longshore workers in the Port.

[2] References to the opinion of the court of appeals in this case are cited to the pages of Appendix A to the Petition for a Writ of Certiorari (herein "Pet.").

members of the three organized crime groups from being employed by or having dealings with any member of the waterfront employer class.

The relief sought by the Government also included a request for the appointment of an administrator to monitor and oversee the affairs and operations of waterfront unions and employers until such time as the waterfront is free of organized crime influence. The complaint asked that the costs of this waterfront czar be imposed on the defendants without any indication that any nominal defendant would be exempt from this substantial monetary burden. Shortly after commencement of the RICO Action the Government stipulated to suspend the litigation *vis-à-vis* NYSA. Proceedings continued against the other defendants.

In 1991 the bulk of the RICO litigation was resolved by the entry of a series of consent and default judgments involving all six union locals, including Local 1814, their union officers, and most of the individual defendants (A-5). Neither NYSA nor any of the other employer defendants were parties to these judgments. Several, including the one involving Local 1814, preclude individual defendants from future employment or business dealings with any entity that does business on the waterfront. The Local 1814 consent judgment also contains the union's consent to the appointment of a monitor who has the power to discipline members, including expulsion from the union and hence disqualification from waterfront employment, for any offense involving membership in or knowing and improper association with La Cosa Nostra or any other criminal group.

On April 2, 1991, the Government moved to certify an Employer Class consisting of all employers who engage in interstate commerce that affects, directly or indirectly, the Waterfront, which the Government defined as the Port of New York and New Jersey, "an integrated commercial marketplace composed of several separate ports occupying a common harbor and encompassing some 1500 square miles and 234 municipalities." The Government reasoned that this employer class certification was necessary

> because the interests of the class will be affected by the proposed injunctive decree. For example, the injunction sought against the

> individual defendants would prohibit named individual defendants and members of the defendant organized crime group classes from holding any employment on the Waterfront. The members of the defendant employer class may wish to employ some of these individuals. Thus, the employer class should be certified so that the Court may fashion complete and effective relief. When and if the Court issues injunctive relief, both the individuals and the defendant employer class will be bound by the injunctive decree.

See Memorandum of Law in Support of the Government's Motion to Certify Four Defendant Classes at 2-3, *United States* v. *Local 1804-1, Int'l Longshoremen's Ass'n*, No. 90-Civ.-0963 (LBS) (S.D.N.Y. filed Apr. 2, 1991).

Faced with the potentially monumental administrative burden of acting as class representative for a huge, amorphous, and limitless group of waterfront employers and the threat of having to pick up the tab for yet another costly bureaucracy,[3] NYSA and its members initiated settlement discussions with the Government, which culminated in a consent judgment (hereinafter "NYSA Consent Judgment").

NYSA Consent Judgment

In the NYSA Consent Judgment the Government agrees to discontinue the RICO Action against NYSA.[4] In turn NYSA agrees that it will not knowingly employ for as long as the injunction remains in effect any individual appearing on a court-approved list of persons enjoined from employment on the waterfront (A-7). This list is to be compiled by the Government and may include (a) individual defendants found in the RICO Action to have committed RICO violations, (b) individuals determined by federal courts to be members of orga-

[3] The longshore industry pays more than $6 million a year to fund the operations of the Waterfront Commission of New York Harbor, a bi-state agency formed in 1953 to eradicate crime, corruption, and racketeering on the New York/New Jersey waterfront. *See De Veau* v. *Braisted*, 363 U.S. 144, 147-51 (1960); N.Y. Unconsol. Laws §§ 9801-9937 (McKinney 1974 & Supp. 1992).

[4] In the NYSA Consent Judgment the term "NYSA" includes the association and those of its members who agree to be bound by the consent judgment.

nized crime groups, and (c) individuals found to have aided and abetted those in classes (a) and (b) in committing federal felonies in the Port (A-6).[5]

The NYSA Consent Judgment was a compromise of the conflicting positions advocated by the Government and NYSA concerning employer class certification. NYSA was relieved of any obligation to act as a representative of any employer class other than NYSA's own members, and any notion that NYSA and its members would have to pay for the costs of a waterfront administrator was abandoned. In exchange the Government received precisely what it had sought in its class certification: a commitment by NYSA's members, who were not parties in the RICO Action, that they would abide by any federal court judgment enjoining disqualified individuals from employment on the waterfront.

Labor Action

The NYSA Consent Judgment triggered the filing by Local 1814 of a grievance under the longshore collective bargaining agreement in effect in the Port (A-7).[6] Local 1814 contended that the NYSA Consent Judgment, if approved, "could create rights and duties that would override the provisions of the collective bargaining agreement," *see* Local 1814's Principal Appeal Brief at 7, *Local 1814, Int'l*

[5] Formulation of the list is a multi-step process, which provides ample opportunity for individuals to contest their inclusion on the list:

Step 1: The RICO Action must be completed;
Step 2: One or more individuals must meet the qualifications for inclusion in class (a), (b), or (c);
Step 3: The Government must obtain a court order in accordance with 18 U.S.C. § 1964(a) approving the standards and procedures for determining inclusion in class (b) or (c);
Step 4: The Government "may provide to NYSA a list" with notice to any individual included on the list, who would then have the right to raise any challenges he may have;
Step 5: The court must approve the list and issue an order, authorized under 18 U.S.C. § 1964(a), enjoining those on the list from seeking, obtaining, or remaining in employment on the waterfront; and
Step 6: NYSA agrees to post the injunction and to be bound by its terms.

[6] NYSA on behalf of its members and ILA on behalf of its affiliated locals, including Local 1814, negotiate this labor contract, which prescribes the terms and conditions of employment for waterfront workers in the Port.

Longshoremen's Ass'n v. *New York Shipping Ass'n*, 965 F.2d 1224 (2d Cir. filed Feb. 18, 1992) (No. 92-6018), and NYSA would be responsible for this breach of the labor contract (A-7). On December 3, 1991, the grievance was considered by the joint labor-management panels empowered by the longshore labor contract to decide grievances. The panels deadlocked, and the grievance was referred to an outside arbitrator (A-7).[7]

Two days after the deadlock, Local 1814 commenced this action against NYSA for a reverse *Boys Markets* injunction (herein "Labor Action"),[8] seeking to thwart the district court's approval of the NYSA Consent Judgment in the companion RICO Action. The only relief Local 1814 sought was an order restraining NYSA and its members from engaging in the following actions to consummate the NYSA Consent Judgment:

1. "circulating said proposed consent judgment among NYSA's members for agreement thereto or soliciting their agreement thereto;"

2. "a member's subscribing to said agreement or agreeing to be listed on Exhibit A thereof;"

3. "delivering an executed copy of the consent judgment to the office of the United States Attorney for the Southern District of New York;"

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[7] An arbitrator was prepared to conduct the arbitration on the afternoon of December 20, 1991. However, on that same day the district court stayed the arbitration *pendente lite* until a determination of Local 1814's motion for a reverse *Boys Markets* injunction (A-9). Local 1814 appealed this temporary stay, but that earlier appeal was withdrawn. *Local 1814, Int'l Longshoremen's Ass'n* v. *New York Shipping Ass'n*, No. 91-6316 (2d Cir. filed Dec. 23, 1991).

[8] *Boys Markets, Inc.* v. *Retail Clerks Local 770*, 398 U.S. 235 (1970), permits federal courts to enjoin union strikes in violation of labor contract no-strike clauses, pending resolution in arbitration of the underlying disputes that triggered the work stoppages. The courts have sanctioned in extraordinary cases a "reverse" version of this *Boys Markets* principle to allow injunctive relief at the behest of a union against the employer party to a collective bargaining agreement to maintain the *status quo* pending resolution in arbitration of a union grievance under the labor contract. *See, e.g., Niagara Hooker Employees Union* v. *Occidental Chem. Corp.*, 935 F.2d 1370 (2d Cir. 1991).

4. "presenting said agreement to Judge Sand for his approval;" and

5. "any other act designed to complete and effectuate said consent judgment pending final disposition of this case or a final resolution of Local 1814's grievance."[9]

Local 1814 withdrew its application for a proposed temporary restraining order ("TRO") containing the Five Restraints, when NYSA and the Government[10] stipulated to withhold submission of the NYSA Consent Judgment for approval in the RICO Action pending disposition of the Labor Action (A-8). NYSA then carried out the steps contemplated by the NYSA Consent Judgment. NYSA completed circulation of the consent judgment to its members for their individual approval. Those members joining in the consent judgment informed NYSA in writing of their agreement to be bound and their consent to be included in the list of subscribing members. NYSA delivered the list of subscribing members to the Government.[11]

NYSA's delivery to the Government of the executed consent judgment consummated acceptance by NYSA and its subscribing members of the terms of that settlement agreement and caused a complete transformation of the litigation. Nothing in the consent judgment bestowed any right or veto power upon NYSA to prevent the Government from submitting the consent judgment to the court for approval in the RICO Action. Whatever right Local 1814 might once have had to the Five Restraints against NYSA became academic, when Local 1814 allowed NYSA to consummate the challenged activities. Local 1814's dispute was now no longer with NYSA but with the Government, which alone controlled that which Local 1814 sought to preclude—submission of the NYSA Consent Judgment for court approval in the RICO Action. Any relief that might be available to

[9] For ease of reference the precise injunctive relief Local 1814 sought will henceforth be referred to as the "Five Restraints."

[10] Local 1814 consented to the Government's intervention in the Labor Action (A-8).

[11] All of these steps for consummation of the NYSA Consent Judgment, except for the receipt of NYSA members' consents and the delivery to the Government of the list of subscribing members, were completed before Local 1814 commenced the Labor Action.

prevent court approval of the NYSA Consent Judgment now had to be sought against the Government, which had sole and exclusive control over the destiny of that consent judgment.[12]

The litigation's metamorphosis signaled the start of a race by Local 1814 to conclude the arbitration of its grievance before any consideration by the district court of not only the consent judgment in the RICO Action but also Local 1814's complaint for a reverse *Boys Markets* injunction in the Labor Action.[13] The race ended, when the district court permanently enjoined the arbitration (A-12).[14]

District Court Decision

Local 1814 claimed that the arbitration of its grievance (of the issue whether NYSA's consummation of the consent judgment enlarged the power of the district court under RICO to enjoin certain individuals from waterfront employment and thereby violated the longshore labor contract) must precede consideration of the meaning

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[12] Under these changed circumstances, the controversy presented by Local 1814's complaint in the Labor Action became moot, and the complaint had to be dismissed, since the legal and factual predicates both for the court's exercise of jurisdiction and for the substantive claims asserted were no longer viable. *See Iron Arrow Honor Soc'y* v. *Heckler*, 464 U.S. 67, 70-71 (1983) (per curiam). Indeed, in its appeal to the Second Circuit Local 1814 abandoned any challenge to the district court's denial of Local 1814's request for a reverse *Boys Markets* injunction (A-16).

[13] NYSA found itself being taken along for the ride. Nevertheless, it could not afford to challenge the arbitration lest it precipitate a nonenjoinable strike that could cause substantial, devastating, and irreparable economic harm to the Port. *See, e.g., Jacksonville Bulk Terminals, Inc.* v. *International Longshoremen's Ass'n*, 457 U.S. 702, 720-24 (1982) (no injunction may issue to prohibit a work stoppage over a non-arbitrable dispute); *Buffalo Forge Co.* v. *United Steelworkers*, 428 U.S. 397, 406-13 (1976) (same).

[14] In light of Local 1814's expressed intention to seek in the Second Circuit a stay of the injunction pending appeal, the district court scheduled a hearing in the RICO Action on the merits of the consent judgment to take place two weeks after disposition of the stay motion. This schedule was revised to two weeks after a decision on the merits of the appeal, when a motions panel of the Second Circuit expedited the appeal because of the mutual commitments of the parties not to proceed with either the arbitration or the approval of the NYSA Consent Judgment until the appeal was concluded. The Second Circuit's stay of mandate pending disposition by this Court led the district court to postpone consideration of the NYSA Consent Judgment in the RICO Action until this Court's resolution of Local 1814's certiorari petition.

and validity of the consent judgment by the court in the RICO Action. By orchestrating the interplay of the judicial and arbitral proceedings, Local 1814 hoped to preempt judicial consideration of the consent judgment by convincing an arbitrator to order NYSA and its members to cease and desist from submitting the consent judgment to the district court for its approval.

The issue boiled down to a simple choice of forum—which proceeding should go first: the arbitration or the approval of the consent judgment. To achieve its strategic objective of maneuvering the arbitration into first place, Local 1814 raised an alleged jurisdictional bar. It contended that the NLGA prohibited the district court from safeguarding its jurisdiction in the RICO action by exercising its authority under the All Writs Act, 28 U.S.C.A. § 1651(a) (West 1966), to enjoin the arbitration.

The district court disagreed. It concluded "that it had jurisdiction under the RICO statute (utilizing its concomitant powers to preserve its jurisdiction under the All Writs Act) to enjoin the arbitration because RICO—a specific federal statute designed to further an overriding congressional concern—falls within the second decisional exception 'carved out' of the Norris-LaGuardia Act" (A-28). This second exception enables federal courts unhindered by the NLGA's anti-injunction provisions to exercise equity jurisdiction when necessary to carry out the purposes and mandates of another federal statute (A-27-28). *See Jacksonville Bulk Terminals, Inc.* v. *International Longshoremen's Ass'n*, 457 U.S. 702, 717 n.17 (1982); *National Ass'n of Letter Carriers* v. *Sombrotto*, 449 F.2d 915, 919 (2d Cir. 1971); *50 Mile Container Rules*, 21 Shp'g Reg. Rep. (P&F) 544, 559 (FMC 1982), *pet. for review denied sub nom. New York Shipping Ass'n* v. *FMC*, 854 F.2d 1338 (D.C. Cir. 1988), *cert. denied*, 488 U.S. 1041 (1989).

Court of Appeals Decision

The court of appeals affirmed the district court's disposition. The appeals court viewed its role as that of discerning the intent of Congress when dealing with the interplay of two federal legislative schemes (A-30). The principle chosen by the Second Circuit to guide its analysis is the rule that when the two federal statutes are

incompatible and "there is no clear intention otherwise, a specific statute will not be controlled or nullified by a general one, regardless of the priority of enactment" (A-31, quoting *Morton* v. *Mancari*, 417 U.S. 535, 550-51 (1974)). Indeed, the court of appeals paid heed to this Court's teaching that the NLGA "must give way when necessary to enforce a duty imposed by another statute" (A-32, quoting *Pittsburgh & Lake Erie R.R.* v. *Railway Labor Executives' Ass'n*, 491 U.S. 490, 514 (1989); *see also* A-27-28, noting the second exception that removes NLGA's limitations on the injunctive powers of federal courts "when necessary to reconcile Norris-LaGuardia with the mandates of a specific federal statute").

A meticulous examination by the Second Circuit of both the statutory language and legislative history of RICO (A-28-30) provided convincing evidence that Congress expected federal courts to issue RICO injunctions in labor disputes in order to achieve one of the prime objectives of the RICO legislation: purging labor unions of the menace of organized crime. The court of appeals concluded that in light of the congressional design embodied in RICO Congress did not intend the NLGA's 60-year-old, general prohibition against injunctions in labor disputes to preclude a federal court from exercising RICO's more specific grant of injunctive power in a labor setting (A-30-33). This approach, which sanctions the injunction against the arbitration sought by Local 1814, assures fulfillment of the important and compelling governmental interests served by the remedial provisions of RICO, since only federal courts, not private arbitrators, can properly consider the public policy concerns that under RICO must be brought into play in resolving the real dispute in this case (A-33-34).

SUMMARY OF ARGUMENT

The court of appeals fashioned a narrow, carefully circumscribed principle that effectuates Congress's intent to allow federal courts, unencumbered by the NLGA, to grant such injunctive relief as may be reasonable and necessary to further RICO's remedial purposes. No court has disagreed with the Second Circuit's accommodation of these two statutory schemes. No court has ever invoked the NLGA to nullify the remedial powers RICO invests in the federal judiciary. Local 1814's strained efforts to fabricate a legal conflict are unavailing:

there is no decision of this Court or of any other court with which the Second Circuit's decision conflicts.

Harmonization of federal statutes is a common judicial function. Indeed, the NLGA itself has frequently had to be cabined to accommodate enforcement of other federal statutes, including both labor and non-labor enactments. This case involves the first instance in which RICO and the NLGA have been the subject of this reconciliation process. However, there is no indication that the interplay of RICO and the NLGA is a recurring phenomenon that will ever develop into a significant question of federal law. There are no other RICO/NLGA cases on the horizon. Indeed, the very concerns that induced petitioner to initiate this litigation may be assuaged by the ultimate disposition of the companion RICO case. All signals caution against hasty intervention by this Court into consideration of an issue that is of concern only to the litigants in this case and does not rise to the level of a substantial question of public importance.

REASONS FOR DENYING THE WRIT

Local 1814 proffers two reasons why review by this Court is appropriate: (1) a conflict with prior decisions of this Court and other courts of appeals, *see* Pet. at 12-22, and (2) the presence of an important question of federal law, *see* Pet. at 22-23. Neither reason has any substance.

1. No Decisional Conflict

The All Writs Act empowers federal courts to issue "all writs necessary or appropriate in aid of their respective jurisdictions and agreeable to the usages and principles of law." 28 U.S.C.A. § 1651(a) (West 1966). The district court presided over both the RICO Action and this case, and the litigants here were also parties in the RICO Action. When confronted with Local 1814's attempt to use arbitration as a means of preempting the court's authority in the RICO Action to pass judgment on the merits of the NYSA Consent Judgment, it was a perfectly legitimate exercise of its All Writs powers for the district court to enjoin the arbitration in order to preserve its jurisdictional prerogative in the RICO Action. *United States* v. *BNS, Inc.*, 858 F.2d 456, 461-62 (9th Cir. 1988) (issuance of an injunction pursuant to the

All Writs Act is appropriate to preserve the court's authority to consider approval of a proposed consent decree).

Local 1814's objection to the injunction in this case rests on the limitations in the NLGA circumscribing federal court jurisdiction to issue injunctions in cases involving or growing out of labor disputes. 29 U.S.C.A. §§ 101, 104 (West 1973). These limitations, however, are not absolute. The NLGA is not an impenetrable barrier that completely excludes every other federal law from any case which could be said to be related, no matter how remotely, to some "labor dispute," even though the interests and purposes of the other legislation are directly at stake. This rigid and absolutist conception of "NLGA *über Alles*" advocated by Local 1814 is directly at odds with principles espoused by this Court and followed in the circuits concerning the appropriate accommodation of two seemingly antagonistic federal statutory schemes.

No federal statute "is an Iland, intire of it selfe"; each "is a peece of the Continent, a part of the *maine*" of federal law embodied in the United States Code.[15] "Frequently the entire scope of Congressional purpose calls for careful accommodation of one statutory scheme to another . . . ." *Southern S.S. Co.* v. *NLRB*, 316 U.S. 31, 47 (1942). There is a duty imposed upon all federal tribunals to harmonize diverse legislative schemes to give effect to the congressional policies and objectives embodied in each. *Morton* v. *Mancari*, 417 U.S. 535, 551 (1974); *Silver* v. *New York Stock Exchange*, 373 U.S. 341, 357-58 (1963); *McLean Trucking Co.* v. *United States*, 321 U.S. 67, 80 (1944). However, when the statutes are in irreconcilable conflict, one obviously must prevail. In making that choice, the Second Circuit in this case did not fashion its own peculiar methodology but applied the prevailing test established by this Court: "Where there is no clear intention otherwise, a specific statute will not be controlled or nullified by a general one, regardless of the priority of enactment." *Morton*, 417 U.S. at 550-51 (citations omitted); *see also Radzanower* v. *Touche Ross & Co.*, 426 U.S. 148, 153 (1976).

The NLGA is no stranger to the process of statutory reconciliation. "The prohibition of the NLGA must give way when necessary to

[15] JOHN DONNE, Poem No. 17, DEVOTIONS UPON EMERGENT OCCASIONS (1624).

enforce a duty specifically imposed by another statute." *Pittsburgh & Lake Erie R.R.* v. *Railway Labor Executives' Ass'n*, 491 U.S. 490, 514 (1989). The NLGA's limitations on the equity powers of federal courts are general proscriptions. *Brotherhood of R.R. Trainmen* v. *Chicago R. & Ind. R.R.*, 353 U.S. 30, 41-42 (1957). Consequently, specific grants of injunctive powers bestowed upon the federal judiciary to enforce compliance with other Acts of Congress take precedence over the NLGA's more general anti-injunction scheme. *See id.* at 41-42; *see also Graham* v. *Brotherhood of Locomotive Firemen & Enginemen*, 338 U.S. 232, 239-40 (1949).

Local 1814 concedes, as it must, *see* Pet. at 4, that the NLGA must yield in order to effectuate the policies and purposes of federal labor and railway labor legislation. *Boys Markets, Inc.* v. *Retail Clerks Local 770*, 398 U.S. 235 (1970); *Burlington N.R.R.* v. *Brotherhood of Maintenance of Way Employes*, 481 U.S. 429 (1987). Local 1814, however, would establish a special preserve for the NLGA that would restrict its susceptibility to the process of statutory accommodation. In Local 1814's view, the NLGA supersedes all non-labor law, since "the only accommodation that can be made is with other labor statutes." *See* Pet. at 20. This formulation ignores the wealth of authority that has subordinated the NLGA to other non-labor enactments.[16] "[T]he Norris-LaGuardia Act's limitations on injunctive relief in cases 'involving labor disputes' do not apply where the requested relief represents a bona fide effort to enforce another federal statute." *50 Mile Container Rules*, 21 Shp'g Reg. Rep. at 559.

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[16] *United Mine Workers* v. *Pennington*, 381 U.S. 657 (1965) (federal antitrust statutes); *Allen Bradley Co.* v. *Local 3, IBEW*, 325 U.S. 797 (1945) (same); *Los Angeles Meat & Provision Drivers Local 626* v. *United States*, 371 U.S. 94 (1962) (same); *Consolidated Express, Inc.* v. *New York Shp'g Ass'n*, 602 F.2d 494 (3d Cir. 1979), *vacated and remanded*, 448 U.S. 902 (1980), *on remand* 641 F.2d 90 (3d Cir.), *mandamus & prohibition denied sub nom. In re International Longshoremen's Ass'n*, 451 U.S. 905 (1981) (same); *Intercontinental Container Transp. Corp.* v. *New York Shipping Ass'n*, 426 F.2d 884 (2d Cir. 1970) (same); *50 Mile Container Rules*, 21 Shp'g Reg. Rep. (P&F) 544 (FMC 1982), *pet. for review denied sub nom. New York Shipping Ass'n* v. *FMC*, 854 F.2d 1338 (D.C. Cir. 1988), *cert. denied*, 488 U.S. 1041 (1989) (federal shipping statutes); *United States* v. *ABC Containerline N.V.*, 572 F. Supp. 150 (S.D.N.Y.), *appeal dismissed*, No. 83-6354 (2d Cir. Dec. 13, 1983) (same); *cf. Burlington Truck Lines* v. *United States*, 371 U.S. 156 (1962) (in Interstate Commerce Act setting, cease and desist relief is appropriate, even when case involves a labor dispute.)

The Second Circuit's treatment in this case of the interplay of the NLGA and RICO conforms to the usual and accepted norms of statutory reconciliation that federal courts are expected to follow in carrying out their judicial responsibilities. In accomplishing its mission the Second Circuit adhered to well-settled legal principles previously enunciated by this Court. There is no decision of this Court or of any other court with which the Second Circuit's decision conflicts. No court has ever invoked the NLGA to nullify the remedial powers RICO bestows upon the federal judiciary. Despite Local 1814's strained and implausible efforts to manufacture a legal conflict, the fact of the matter is that none exists.

2. No Paramount Federal Question

Strained interpretations pervade Local 1814's entire position in this litigation. Local 1814 does not suggest, nor could it, that compliance with a court order disqualifying an individual from employment would constitute a breach of the longshore labor contract.[17] Indeed, its counsel advised the district court that Local 1814 does not object to the portion of the NYSA Consent Judgment calling for NYSA and its members not to employ class (a) individual defendants found to have engaged in RICO violations. What Local 1814 finds objectionable is the disqualification from waterfront employment of class (b) and class (c) individuals.[18]

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[17] The contract does not contain any restriction against compliance with a lawful injunction restricting employment of certain individuals. In the longshore industry the basic requirements for employment have long been dictated by the Waterfront Commission, the agency Congress has entrusted to regulate employment and investigate criminal activity on the waterfront. *See* N.Y. Unconsol. Laws §§ 9801-9937 (McKinney 1974 & Supp. 1992). The Waterfront Commission may remove persons from the longshoremen's registry—i.e., bar them from employment—for a variety of reasons. These Waterfront Commission determinations have never been the subject of the parties' grievance and arbitration procedure. There is simply no provision in the labor contract which entitles a disqualified longshore worker to continued employment.

[18] Class (b) consists of members of organized crime groups, and class (c) individuals aiding and abetting those in the first two classes in the commission of felonies in the Port. It is unlikely that anyone in these two classes could be a longshore worker, since that person could not qualify for Waterfront Commission registration and, thus, would not be eligible to work on the waterfront. *See* Waterfront Commission Compact § 1, art. VIII, ¶¶ 3, 5, N.Y. Unconsol. Laws §§ 9829, 9831 (McKinney 1974).

Local 1814 believes that this disqualification would stem not from the remedial powers of the district court under RICO "but from the agreement of NYSA and the government to which the court only gives its approval." *See* Pet. at 8 n. 5. In other words, the union believes that in the NYSA Consent Judgment NYSA and its members are not agreeing merely to comply with a court order of employment disqualification, which in the union's view would "exceed the powers of a district court under RICO," *id.* at 8 n. 5, but are themselves creating the class (b) and class (c) disqualifications by agreement with the Government. It is this latter scenario which Local 1814 contends would constitute a unilateral change in the terms of the longshore collective bargaining agreement, giving rise to an arbitrable dispute. *Id.* at 8.[19]

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[19] Local 1814's suspicions are unfounded. NYSA and its members have consistently maintained their understanding that the NYSA Consent Judgment is an agreement by NYSA and its members to abide by a court order in the RICO Action enjoining individuals in the three designated classes from employment on the waterfront. This understanding is repeatedly articulated in the express language of the consent judgment:

> At any time after completion of litigation in the District Court in this case, plaintiff [the government] may provide to NYSA a list, *approved by this court, of individuals prohibited* from seeking, obtaining, or remaining in employment on the Waterfront (A-6).
>
> * * *
>
> With respect to subdivisions (b) and (c) of this paragraph, the Government may seek entry of an order *in accordance with 18 U.S.C. § 1964(a)* . . . which shall state the standards and procedures to be utilized in determining whether *an individual . . . should be prohibited* from seeking, obtaining, or remaining in employment on the Waterfront (A-6).
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> * * *
>
> NYSA will not knowingly employ in any capacity any individual whose name appears on the list . . . for so long as the Court's *injunction against the individual* remains in effect (A-7).
>
> * * *
>
> *Any order issued by the Court against any individual proscribing said individual from seeking, obtaining, or remaining in employment on the Waterfront* shall contain a provision prohibiting said individual from commencing an action to challenge the order in any court or forum except this one.

(Emphasis added). The NYSA Consent Judgment is no more than an acknowledgement by NYSA and its members that though dismissed from the RICO Action, they will be bound by future court orders of employment disqualification entered by virtue of the exercise of the district court's authority under RICO, *see* 18 U.S.C.A. § 1964(a) (West 1984), not by virtue of any authority vested in the court by the consent of NYSA and the Government.

If Local 1814 is correct that the district court lacks authority under RICO to disqualify individuals falling within classes (b) and (c), no injunctive order of disqualification would ever issue, Local 1814's fears would never materialize, and no labor dispute would ever arise. If, on the other hand, the district court were to reject NYSA's understanding of the agreement embodied in the NYSA Consent Judgment and issued an injunction founded not on its inherent authority under the All Writs Act or the specific grant of authority under the RICO statute, *see* 18 U.S.C. § 1964, but on a putative grant of power arising out of the settlement agreement, a serious legal question would arise concerning the ability of private parties by agreement to confer upon a federal court powers over third parties not granted to it by the Constitution or by Congress.

The upshot of all of this is clear: at this point Local 1814 suffers considerable confusion as to the meaning, effect, and validity of the NYSA Consent Judgment. Until these issues are resolved, all that exists is Local 1814's belief, which may or may not be vindicated at some later time, that NYSA is about to breach the collective bargaining agreement by entering into the consent judgment. Whether this belief will ever ripen into an actual controversy depends upon what the consent judgment means and whether, if Local 1814's interpretation of that settlement agreement were to prevail, it is legally valid. The district court, not an arbitrator, is the appropriate tribunal to decide these threshold issues.[20]

This case would be hardly problematic were it not for the NLGA. But the ability of Local 1814 to invoke that statute depends upon the presence now of an actual labor dispute, not some belief or suspicion that NYSA or its members may at some future time take a position on the interpretation of the labor contract that is at odds with Local

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[20] An arbitrator's realm of competence is "limited to resolving individual contract disputes which rarely involve broad public interest considerations." *United States* v. *IBT (Star Market Co.)*, 954 F.2d 801, 809 (2d Cir. 1992), *cert. denied*, 112 S. Ct. 2993 (U.S. June 22, 1992) (No. 91-1675), and does not embrace consideration of the meaning and validity of a RICO consent judgment, which are matters falling exclusively within the jurisdictional competence of the federal courts. *United States* v. *IBT (Yellow Freight Systems, Inc.)*, 948 F.2d 98, 106 (2d Cir. 1991), *petition for cert. filed*, 60 U.S.L.W. 3843 (U.S. May 29, 1992) (No. 91-1938).

1814's.[21] Indeed, Local 1814 itself admits that "the Consent Judgment, *once in place*, *could* create rights and duties that would override the provisions of the collective bargaining agreement." *See supra* p. 5 (emphasis supplied). Under Local 1814's own formulation, the Consent Judgment *could* only do so if NYSA's understanding of the meaning of that settlement agreement does not prevail.

If NYSA is correct that all the consent judgment does is impose a duty on NYSA and its members to abide by a court order exercising remedial powers granted by RICO, then Local 1814 concedes no violation of the labor contract would arise. Even if NYSA's interpretation does not prevail, no labor dispute can arise unless the district court rejects Local 1814's contention that the consent judgment exceeds the powers of a district court under RICO or concludes that, despite this limitation, private parties can by consent confer on the court that which the applicable legislation does not bestow.

Only if both NYSA's interpretation fails and the district court nonetheless concludes that the consent judgment is valid, would Local 1814's formulation possibly mature. Perhaps, after these two issues have been resolved, the theoretical difference of opinion advanced by Local 1814 might ripen into an actual arbitrable labor dispute. This possibility would depend on occurrences yet to unfold. However, until then, no labor dispute can arise, and the NLGA does not present any

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[21] The proscriptions of the Norris-LaGuardia Act are triggered only if there exists in fact a real, concrete, and fully-ripened labor dispute. *Cf. Chicago Typographical Union No. 16* v. *Chicago Sun-Times, Inc.*, 935 F.2d 1501, 1507-08 (7th Cir. 1991) (a union's belief, even if vindicated by subsequent events, that management held a different view than the union's does not constitute an arbitrable dispute; the disagreement must ripen into an actual controversy); *Chicago Typographical Union No. 16* v. *Chicago Sun-Times, Inc.*, 860 F.2d 1420, 1425-26 (7th Cir. 1988) (imputing an interpretation of the labor contract to management does not create an arbitrable issue; the union must show that management "has acted or has threatened to act in a manner inconsistent with the Union's interpretation of the contract"); *Alpha Beta Co.* v. *Retail Store Employees Local 428*, 671 F.2d 1247, 1249-50 (9th Cir. 1982) (management's suspicion that union was preparing to take a position in conflict with management's does not create an arbitrable dispute over the interpretation of the labor contract).

obstacle to the district court's exclusive authority to address these two issues in the first instance in the RICO Action.[22]

The concerns that may have prompted Local 1814 to institute this Labor Action may completely disappear when it becomes apparent that Local 1814's fears about the role of a federal court in a RICO Action are completely unfounded. NYSA has more faith in the ability of a federal court in exercising its remedial equity powers under RICO to give due regard to any labor interests that may be implicated. Certainly, a federal court is better equipped than an arbitrator to balance the sensitive and delicate interplay of RICO's remedial purposes and policies with any labor interests that may be at stake.

The Second Circuit in fashioning a limited exception to the NLGA in this case did not deviate from the accepted and usual norms that guide the federal judiciary in accommodating conflicting federal statutes. Local 1814's suggestion that when the NLGA is involved, only this Court is authorized to engage in this reconciliation process, *see* Pet. at 22-23, betrays a critical misconception of the role of this Court. It does not sit as a Super-Legislature to enact exceptions to the NLGA or to any other federal legislation. Its function is to review judicial decisions of special moment that involve substantial questions of federal law that transcend the interests of the immediate litigants. *Rice* v. *Sioux City Memorial Park Cemetery, Inc.*, 349 U.S. 70, 79 (1955). Any reconciliation of the NLGA with other federal enactments, therefore, must perforce be initiated at a lower federal court level. Whether the lower court's disposition should be reviewed by this Court does not depend upon the fact that the NLGA, or for that matter any other particular federal statute, is involved but whether the lower court's determination concerns a substantial issue of federal law of paramount public importance.

This case is the first instance in which a federal court has had to accommodate the provisions of the NLGA and RICO. No other RICO/NLGA cases are on the horizon, and it does not appear that the

[22] This resolution of the threshold question identified by NYSA, *see supra* p. i, disposes of the controversy in this case without the need to address the questions framed by Local 1814. Review is inappropriate when the case can be decided on a ground not raised in the certiorari petition. *See The Monrosa* v. *Carbon Black Export, Inc.*, 359 U.S. 180 (1959).

interplay of RICO and the NLGA will ever develop into the type of recurring phenomenon that is characteristic of an important question worthy of review by this Court. *Maryland* v. *United States*, 381 U.S. 41, 43 (1965); *Massachusetts Trustees* v. *United States*, 377 U.S. 235, 237 (1964).[23] The fact of the matter is that whatever importance this case may have does not extend beyond the parochial interests of the disputants. Local 1814's efforts to implicate the rights of the Devil in the controversy does not broaden the significance of the case. "Giving the Devil his due" is hardly a valid reason for granting certiorari.

CONCLUSION

Since the decision of the Second Circuit in this case does not conflict with any decision of this Court or any other court and resolves an issue of limited scope and importance in a manner consistent with settled principles of law, there is no reason for Supreme Court review. The petition for a writ of certiorari should be denied.

Dated: New York, New York
August 21, 1992

Respectfully submitted,

CONSTANTINE P. LAMBOS (Counsel of Record)
DONATO CARUSO
LAMBOS & GIARDINO
29 Broadway (9th Floor)
New York, New York 10006
(212) 943-2470

Attorneys for Respondent
New York Shipping Association, Inc.

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[23] An issue of first impression is not a worthy candidate for review by this Court. It is preferable to await further study and analysis by the lower courts so that the issue will be exposed to the type of percolation in the lower courts necessary to assure that the essence of the issue has been extracted and properly refined and illuminated before it is addressed by this Court. *McCray* v. *New York*, 461 U.S. 961, 963 (1983) (Stevens, J.).

(3)

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No. 92-144

In the Supreme Court of the United States

OCTOBER TERM, 1992

LOCAL 1814, INTERNATIONAL LONGSHOREMEN'S ASSOCIATION, AFL-CIO, PETITIONER

v.

NEW YORK SHIPPING ASSOCIATION, INC., ET AL.

ON PETITION FOR A WRIT OF CERTIORARI TO THE UNITED STATES COURT OF APPEALS FOR THE SECOND CIRCUIT

BRIEF FOR THE UNITED STATES IN OPPOSITION

KENNETH W. STARR
Solicitor General

STUART M. GERSON
Assistant Attorney General

WILLIAM KANTER
MARC RICHMAN
Attorneys

Department of Justice
Washington, D.C. 20530
(202) 514-2217

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QUESTION PRESENTED

The Racketeer Influenced and Corrupt Organizations Act (RICO), enacted in 1970, grants district courts jurisdiction to issue injunctions to prevent and restrain RICO violations, including several directed specifically against union racketeering. 18 U.S.C. 1964(a). The Norris-LaGuardia Act, 29 U.S.C. 101, enacted in 1932, generally deprives district courts of jurisdiction to issue injunctions in cases "involving or growing out of any labor dispute," subject to certain statutory and judicially recognized exceptions. The question presented is:

Whether the Norris-LaGuardia Act deprived the district court of its jurisdiction under RICO to issue an injunction barring petitioner from proceeding with an arbitration that petitioner instituted solely for the purpose of preventing the district court from approving a settlement of a civil RICO case brought by the United States against the New York Shipping Association to eliminate the influence of organized crime and racketeering in the Port of New York and New Jersey.

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OPINIONS BELOW

The opinion of the court of appeals (Pet. App. A1-A34) is reported at 965 F.2d 1224. The oral opinion of the district court (quoted in part at Pet. App. A12-A16) is unreported.

JURISDICTION

The judgment of the court of appeals was entered on June 1, 1992. The petition for a writ of certiorari was filed on July 22, 1992. The jurisdiction of this Court is invoked under 28 U.S.C. 1254(1).

STATEMENT

1. The Port of New York and New Jersey [hereinafter the Waterfront] consists of separate ports sharing a common harbor and encompassing 234 municipalities and approximately 1500 square miles. The harbor plays a critical role in the movement of manufactured, agricultural, and other goods throughout the Eastern seaboard. As the second largest port in the world, it has a major impact on the Nation's commerce. S.A. 54.[1]

For more than 50 years, the Waterfront has been a setting for corruption, violence, and abuse of labor and business by organized crime families—a pattern of racketeering that has been facilitated by organized crime's control of Waterfront labor unions operating on the labor-intensive bottleneck of the docks in New York and New Jersey. S.A. 54, 88-167. The President's Commission on Organized Crime, chaired by Judge Irving R. Kaufman, described the "almost unfettered control exercised over the New York-New Jersey Waterfront by organized crime"; referred to the International Longshoremen's Association, AFL-CIO (ILA), as a "nest for waterfront pirates—a racket, not a union"; and concluded that the ILA, including petitioner Local 1814, "remain[s] firmly under the control of the Gambino and Genovese [organized crime] families." President's Commission on Organized Crime, *The Edge: Organized Crime, Business, and Labor Unions* 33, 39, 47 (1986). ILA membership is required for anyone performing longshore or related work at the Waterfront. J.A. 152.

[1] "S.A." refers to the Supplemental Appendix filed in the court of appeals. "J.A." refers to the Joint Appendix filed in the court of appeals.

In an effort to eliminate the influence of organized crime on the Waterfront, the United States instituted a civil RICO action on February 20, 1990, against purported members of the Genovese and Gambino organized crime families, purported members of the "Westies" organized crime group, six local unions (including petitioner), two Waterfront employers, and two Waterfront employers' organizations, including respondent New York Shipping Association, Inc. (NYSA).[2] Pet. App. A4. The complaint charged the defendants with extortion, murder, embezzlement, labor payoffs, mail fraud, and other acts of racketeering. S.A. 51-175. It sought equitable relief to dislodge the pervasive infiltration by organized crime of the ILA and commercial operations on the Waterfront, including prohibitions against involvement by organized crime members and their associates with the ILA and the reform of disciplinary and election procedures within union locals to prevent future influence of organized crime. Four of the union locals, including petitioner, entered into consent decrees with the government. Pet. App. A4; S.A. 269.

[2] NYSA is a multi-employer association of vessel carriers, stevedoring companies, and other maritime companies. Its members employ longshore workers and other employees at piers and waterfront terminals to handle freight transported by water to and from the Port of New York and New Jersey. As a multiemployer bargaining representative, NYSA negotiates and administers collective bargaining agreements with the ILA. J.A. 2-3; NYSA C.A. Br. 4 n.2. NYSA was not named as a RICO violator in the RICO complaint; it was named as a representative of employers in industries affecting Waterfront commerce in order to effectuate complete relief. Pet. App. A4. Members of NYSA were, however, charged with various offenses.

Petitioner's consent decree (S.A. 269-294) was entered into after nearly nine weeks of trial, and it has been approved by the district court. Pet. App. A5. In that decree, petitioner expressly acknowledges "that there have been Government allegations, sworn testimony, and public findings regarding corruption of [petitioner] by La Cosa Nostra, and criminal prosecutions reflecting involvement in La Cosa Nostra on the part of [petitioner's] officials"; and petitioner "agrees that there should be no criminal element or La Cosa Nostra corruption of any part of the ILA, including [petitioner]." S.A. 269-270. The consent decree also permanently enjoins union officers and members from committing acts of racketeering activity and from "knowingly and improperly associating with any member or associate of any La Cosa Nostra crime family or any other criminal group." S.A. 271. The district court retains jurisdiction to supervise implementation of the decree. S.A. 285.

2. Late in 1991, NYSA and the government executed a stipulation of settlement in the form of a proposed consent judgment in the Waterfront RICO case. J.A. 56-63. The provision at issue here states that NYSA will not knowingly employ any individual whose name appears on a list (approved by the district court) of individuals prohibited from seeking, obtaining, or remaining in employment on the Waterfront. Pet. App. A6. Such individuals in-clude persons found in the Waterfront RICO case to have committed a RICO violation; persons determined by a United States District Court to be a member of any organized crime group; and anyone who has aided and abetted any such person in committing a federal felony in the Port of New York and New Jersey. NYSA may apply to the district court to have any person placed on the list, and proceedings for that purpose are to be conducted

under the Federal Rules of Evidence. *Ibid.* The proposed settlement has not yet been accepted by the district court. Pet. 11.[3]

3. Petitioner and NYSA are parties to a collective bargaining agreement that provides for arbitration of any "grievance, dispute, complaint or claim arising out of or relating to" the agreement. See Pet. App. A7. Petitioner filed a grievance under this provision seeking to prevent NYSA from entering into the proposed consent judgment. Petitioner contended that the proposed judgment would create new grounds for discharge beyond those identified in the collective bargaining agreement, and would make a prohibited unilateral change in the agreement. After the labor-management panels reached a deadlock in the first three stages of the contract's grievance machinery, the grievance was referred to arbitration. *Ibid.* NYSA was reluctant to challenge the arbitration, "lest it precipitate a nonenjoinable strike that would cause substantial, devastating, and irreparable economic harm to the Port." NYSA C.A. Br. 10.

4. Petitioner, apparently concerned that the district court's approval of the proposed consent judgment would preempt arbitration and override the contract, filed the instant suit in the district court seeking a preliminary and permanent injunction to prevent NYSA from taking any action to effectuate the proposed judgment. The United States intervened as a defendant and agreed that the consent

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[3] Contrary to petitioner's suggestion (Pet. 13, 18), there is no reason to believe that the consent decree goes beyond what the court could order following a trial, or that it is a ploy to extend the court's jurisdiction. Rather, the decree simply complements the provisions of petitioner's consent decree that permanently bar members from associating with organized crime.

judgment would not be entered pending disposition of this case. Pet. App. A8. However, when petitioner sought to expedite arbitration, "despite the absence of any truly exigent circumstances," *id.* at A10, the United States moved for an injunction against the arbitration.

After hearing argument and learning that the arbitrator would hear the grievance and render a decision within a few hours (J.A. 23-24), the district court, on December 20, 1991, preliminarily enjoined petitioner from arbitrating its grievance regarding the proposed consent decree. J.A. 87, 138. In response to questioning by the district court, petitioner made it clear that if the arbitration went forward, petitioner would argue that the district court was without authority to approve and enter the consent judgment between NYSA and the United States. J.A. 108-109. In particular, petitioner stated that the arbitrator would be asked to issue an order directing NYSA to cease and desist from bringing the proposed consent judgment before the district court, which would upset the settlement in the pending RICO case. J.A. 109, 117, 118, 119.

On January 9, 1992, following further argument, the district court permanently enjoined petitioner from proceeding with the arbitration. J.A. 288. In an oral opinion quoted in part by the court of appeals, the district court rejected the contention that an injunction staying the arbitration would violate the Norris-LaGuardia Act, 29 U.S.C. 101-115, holding that it had jurisdiction under the RICO statute, the All Writs Act, 28 U.S.C. 1651, and the court's inherent power to preserve its jurisdiction. Pet. App. A13. The court found that an injunction was required to prevent petitioner from going forward with arbitration of a non-arbitrable issue: the balancing of the respective

rights of all parties whose interests were implicated by the proposed consent judgment, including the public interest as expressed in the RICO statute. *Id.* at A15-A16. The court explained (*id.* at A15):

> Counsel have acknowledged, as indeed the cases compel them to do, that it would be beyond the scope of the arbitrator's reference and authority to consider public-interest questions, to consider the RICO context out of which the proposed consent decree emerges, [or] to consider the record adduced after 42 trial days in this case * * * . It is only this Court that can make that determination. It is not an arbitrable determination.

5. In what it termed a "narrow" decision, Pet. App. A34, the court of appeals affirmed. *Id.* at A1-A34. It held that "when injunctive relief in what would otherwise be a 'labor dispute' is properly sought to further RICO's remedial purposes, the anti-injunction provisions of Norris-LaGuardia are inapplicable, and a federal court has jurisdiction to grant injunctive relief." *Id.* at A34.

The court of appeals acknowledged that the Norris-LaGuardia Act must be read broadly. But it also recognized this Court's holdings that a district court "does have jurisdiction to grant injunctive relief * * * when the Norris-LaGuardia Act must be reconciled with the mandates of a specific federal statute." Pet. App. A19 (citing *Boys Markets, Inc.* v. *Retail Clerks Union, Local 770*, 398 U.S. 235, 251 (1970), and *Jacksonville Bulk Terminals, Inc.* v. *ILA*, 457 U.S. 702, 717 n.17 (1982)). The court of appeals found RICO to be such a statute.

First, the court noted the inter-relationship between RICO and labor activities, quoting the congressional finding that "organized crime's 'money and

power are increasingly used to infiltrate and corrupt legitimate business *and labor unions*,'" and Congress's statement of purpose to eradicate organized crime by, *inter alia*, "providing * * * *new remedies* to deal with the unlawful activities of those engaged in organized crime." Pet. App. A29 (quoting the Statement of Findings and Purpose of the Organized Crime Control Act of 1970, Pub. L. No. 91-452, 84 Stat. 923 (emphasis added by court)).

Second, the court of appeals pointed out that when Congress enacted RICO in 1970, it specifically focused on the infiltration of organized labor and the waterfront by organized crime. Thus, the court stated that "Congress was aware that organized crime 'quietly continues to infiltrate and corrupt organized labor,'" and that "*waterfront entrepreneurs* have been persuaded for labor peace to countenance gambling, loan-sharking, and pilferage. As the takeover of organized crime cannot be tolerated in legitimate business, so, too, it cannot be tolerated here." Pet. App. A29 (quoting S. Rep. No. 617, 91st Cong., 1st Sess. 78 (1969)). The court also found it significant that four of the enumerated predicate acts of racketeering activity defined in RICO involve matters pertaining to unions: "embezzlement of employee plan funds, employee benefit plan kickbacks, illegal labor payoffs, and embezzlement of union funds." Pet. App. A29-A30 (citing 18 U.S.C. 1961(1)(B) and (C)).

Finally, the court of appeals relied on the "special tools" Congress had enacted "to aid in the eradication of organized crime," including a directive that RICO be liberally construed in order to effectuate its remedial purposes (§ 904(a), 84 Stat. 947); a grant of jurisdiction to the district courts to prevent and restrain RICO violations "by issuing appropriate orders" (see

18 U.S.C. 1964(a)); and special authority for the Attorney General "to bring civil actions such as the civil RICO action underlying this case" (see 18 U.S.C. 1964(b)). Pet. App. A30. The court reasoned that "[o]nce the district court acquires jurisdiction over the subject matter of, and the parties to, the litigation," "the All Writs Act [28 U.S.C. § 1651] authorizes a federal court to protect that jurisdiction." *Ibid.*

ARGUMENT

The court of appeals correctly applied settled principles in holding that the injunction entered by the district court in this case is not barred by the Norris-LaGuardia Act. Its ruling does not conflict with any decision of this Court or any other court of appeals. Moreover, the subject matter of the arbitration against which the injunction was entered —removal of longshore workers associated with organized crime from employment on the Waterfront —has been withdrawn from the scope of the collective bargaining agreement by petitioner's own agreement to a consent decree that permanently enjoins it from having members who are associated with organized crime, and that authorizes the district court to supervise implementation of the decree. The court of appeals' affirmance of the injunction entered in these unique circumstances does not warrant review by this Court.

1.a. Although the Norris-LaGuardia Act by its terms broadly bars injunctions in matters "involving or growing out of a labor dispute," 29 U.S.C. 101, petitioner concedes (Pet. 4) that there are a number of exceptions to that bar. As the Court stated in *Boys Markets*, the federal courts must accommodate the "seemingly absolute terms of the Norris-LaGuardia

Act and the policy considerations underlying [other statutes]," and "consideration must be given to the total corpus of pertinent law and the policies that inspired ostensibly inconsistent provisions." 398 U.S. at 249-250. Thus, the Norris-LaGuardia Act does not apply to labor disputes "in limited situations where necessary to accommodate the Act to specific federal legislation or paramount congressional policy." *Jacksonville Bulk Terminals*, 457 U.S. at 707-708.

As the court of appeals pointed out, a primary goal of RICO is to purge unions of the influence of organized crime. Accordingly, RICO undoubtedly is "pertinent law," to which the Norris-LaGuardia Act must be accommodated. It is of no moment that RICO does not specifically state that it carves out an exception to the Norris-LaGuardia Act. Congress "has the power to decide what the policy of the law shall be, and if it has intimated its will, however indirectly, that will should be recognized and obeyed." *United States* v. *Hutcheson*, 312 U.S. 219, 235 (1941). Here, Congress's goals of purging unions of racketeering, and of authorizing injunctive actions by the Attorney General to that end, are far more than "intimated * * * indirectly." They are spelled out in RICO itself, and in the Organized Crime Control Act of 1970 in which RICO was enacted.[4]

[4] Arbitration is not among the specific acts that the Norris-LaGuardia Act enumerates as being protected from restraining orders or injunctions. See 29 U.S.C. 104(a)-(i). Although the Act nevertheless applies to such injunctions, it is not unreasonable for a court to find greater latitude for accommodating overriding policies in other federal statutes where the injunction is not at the core of Congress's concern in passing the Act.

Against the foregoing background, the court of appeals was correct in holding that this case represents one of the narrowly defined situations in which it is necessary to accommodate the Norris-LaGuardia Act to a specific federal statute (the more recently enacted RICO statute), and that the Norris-LaGuardia Act must yield to the paramount congressional policy that labor unions be purged of organized crime and racketeering. Indeed, this case is closely akin to one of the exceptions set forth in the Norris-LaGuardia Act itself—the interdiction of violence and fraud. See 29 U.S.C. 104(i). The underlying RICO complaint in this case is rife with specific allegations of violence and fraud (see S.A. 89-163), and the prohibition against involvement by organized crime in petitioner is intended to eliminate that type of violence and fraud. In short, "[t]he Norris-LaGuardia Act was responsive to a situation totally different from that" at issue in this case. *Boys Markets*, 398 U.S. at 250.

b. As petitioner points out (Pet. 19-21), there are numerous decisions of this Court and the courts of appeals enforcing the Norris-LaGuardia Act's anti-injunction provision; some of those decisions hold that injunctions against arbitration are generally barred by the Act. But petitioner's citation to those decisions misses the point. This case involves not the scope of the Act's prohibition as a general matter, but an *exception* to that prohibition by virtue of the RICO statute. As to the latter issue, petitioner has cited no case holding that the RICO statute's substantive prohibitions and remedies must yield to the general terms of the Norris-LaGuardia Act, even when an injunction against arbitration is essential to enforcing RICO's mandates. The decisions of this Court and other courts of appeals cited by petitioner involve

statutes other than RICO, and therefore present no conflict with the decision below.

c. Contrary to petitioner's suggestion (Pet. 5), this is not a case in which a party seeks to avoid a contractual obligation to arbitrate. Arbitration cannot vindicate the rights of union members who are associated with organized crime to retain their union membership and employment, because such membership is permanently barred by the consent decree entered into by petitioner with the United States. Moreover, it was the United States—not NYSA—that sought and obtained the injunction in this case. Cf. *United States* v. *United Mine Workers*, 330 U.S. 258, 269-273 (1947).

2. The injunction entered by the district court in this case is justified by more than the limited exception to the Norris-LaGuardia Act that is carved out by the RICO statute. Here, the subject matter of the arbitration that the district court enjoined—employment rights for union members associated with organized crime—has been withdrawn from the contract between petitioner and NYSA by petitioner's own consent decree in the RICO case. That decree permanently enjoins union officers and members from "knowingly and improperly associating with any member or associate of any La Cosa Nostra crime family or any other criminal group." S.A. 271. Consequently, union membership, and hence Waterfront employment (see J.A. 152), are strictly forbidden for individuals associated with organized crime. As a result, the matter is not arbitrable. It therefore is not, insofar as petitioner and its members are concerned, a matter "involving or growing out of a

labor dispute" within the meaning of the Norris-LaGuardia Act.[5]

Moreover, because the district court retained jurisdiction to supervise implementation of the consent decree between petitioner and the United States (S.A. 285), the order at issue here could properly have been entered as an exercise of the court's supervisory jurisdiction under that decree. The fact that the order instead carried the caption of the instant case, which was brought by petitioner to circumvent the RICO case, does not elevate a narrow issue arising out of the particular consent decree between petitioner and the United States into a question of general importance warranting review by this Court.[6]

3. Contrary to petitioner's closing characterization of the decision below, this is hardly a case of cutting down every law in the land to get at the devil. See Pet. 23. The court of appeals simply applied settled law to conclude that, in the narrow instance before the court, Congress intended the RICO statute to override the Norris-LaGuardia Act's general proscription against injunctions in cases arising out of labor disputes. Moreover, this case could have been decided on the alternative ground that petitioner's RICO settlement withdrew from the scope of collective bargaining and arbitration the subject of employing longshore workers who are associated

[5] A judgment may be defended on any ground that the law and the record permit. *United States* v. *New York Telephone Co.*, 434 U.S. 159, 166 n.8 (1977).

[6] Petitioner's concerns (Pet. 16 n.9) about the due process rights of members who may be falsely accused of organized-crime associations are premature. The consent decree between NYSA and the United States has not been approved, and petitioner accordingly may present its concerns to the district court at the appropriate time.

with organized crime, and instead submitted that subject matter to the jurisdiction of the district court pursuant to the settlement and the RICO statute. That unremarkable result scarcely constitutes the sort of lawless judicial behavior that petitioner describes.

CONCLUSION

The petition for a writ of certiorari should be denied.

Respectfully submitted.

KENNETH W. STARR
Solicitor General

STUART M. GERSON
Assistant Attorney General

WILLIAM KANTER
MARC RICHMAN
Attorneys

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NEW YORK SHIPPING ASSOCIATION, INC., AND UNITED STATES OF AMERICA,

Respondents.

ON PETITION FOR A WRIT OF CERTIORARI TO THE UNITED STATES COURT OF APPEALS FOR THE SECOND CIRCUIT

PETITIONER'S REPLY BRIEF

Thomas W. Gleason
Attorney for the Petitioner
26 Broadway - 17th Floor
New York, New York 10004
(212) 425-3240

Of Counsel:
Ernest L. Mathews, Jr.

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Pittsburgh & Lake Erie R.R. v. Railway Labor Executives' Ass'n, 491 U.S. 490 (1989) 5

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NO. 92-144

IN THE

Supreme Court of the United States

OCTOBER TERM 1992

Local 1814, INTERNATIONAL LONGSHOREMEN'S ASSOCIATION, AFL-CIO,

Petitioner,

v.

NEW YORK SHIPPING ASSOCIATION, INC., AND UNITED STATES OF AMERICA,

Respondents.

ON PETITION FOR A WRIT OF CERTIORARI TO THE UNITED STATES COURT OF APPEALS FOR THE SECOND CIRCUIT

PETITIONER'S REPLY BRIEF

Petitioner Local 1814 of the International Longshoremen's Association, AFL-CIO, submits this brief in reply to the briefs in opposition to the petition filed by Respondents the United States of America and New York Shipping Association, Inc. ("NYSA").[1]

[1] NYSA filed its opposing brief ("NYSA Br.") on August 21, 1992. The government, after having been granted two extensions of time, filed its brief ("Govt. Br.") on October 7, 1992.

I
The Local 1814 Consent Decree Does Not Abrogate The Norris-LaGuardia Act

In an attempt to divert this Court's attention from the real reasons for granting the writ the government makes an argument that somehow escaped the notice of the United States Attorney below, NYSA, the district court, and the court of appeals. Invoking the rule that the judgment can be defended on any ground that the law and record allow, Govt. Br. at 13, n. 5, the government claims that this case is unworthy of review because Local 1814 by entering into a consent decree which enjoins its members from associating with organized crime has removed from its collective bargaining agreement with NYSA the very issue which it is enjoined from arbitrating. *See* Govt. Br. at 12-13. The government characterizes the injunction as merely complementing "the provisions of petitioner's consent decree that permanently bars members from associating with organized crime." Govt. Br. at 5, n. 3.

This cleverness of this argument is, unfortunately for the government, sapped of all vitality by the facts. It is based upon a superficial knowledge of the case and a shallow grasp of the issues.[2] The fact is that the NYSA-government consent decree by its terms is not limited to Local 1814 members but is intended to apply to *all* ILA members in the port, even those whose locals were never parties in the RICO case and those who settled on different terms than Local 1814. Consequently petitioner brought the arbitration, the action in the district court, and the appeal on behalf of its members and of all other ILA locals in the port and their members. *See* Petition at 9.

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[2] The government's brief abounds in misstatements. It claims that members of NYSA were "charged with various offenses," *see* Govt. Br. at 3, n. 2, which is not true. NYSA was named as a defendant solely to give the government relief. *See* Pet. App. A-4. The government further claims that under the proposed consent decree NYSA may apply to the district court to have persons placed on the blacklist. Govt. Br. at 4. This is an error. The consent decree says only that the government may provide to NYSA a list of persons to be barred from waterfront employment. *See* Pet. App. at A-6.

The district court recognized the scope of the case. In the portions of his oral opinion quoted by the court of appeals, Judge Sand constantly refers to "Local 1814 and the International" Pet. App. at A-10, A-11, "the unions" (plural), Pet. App. at A-12, A-13, "Local 1814 and the associated unions," Pet. App. A-14. Thus, whatever may be the case with respect to Local 1814 members (and the union's power to waive their rights is not free from question), there has certainly been no waiver or "removal" from the contract with respect to the rights of the rest of the thousands of ILA-represented NYSA employees in the port.

Moreover, even with respect to Local 1814 members, the consent decree merely enjoins them from associating with organized crime. It does not forfeit their employment or their arbitration rights under the collective bargaining agreement. The remedy for disobedience of the consent decree would be a contempt proceeding in the district court or a proceeding before the Monitor appointed to enforce the consent decree. The government's argument cavalierly suggests still a third layer of enforcement mechanisms against persons who were not even important enough to be named among the 54 defendants in the RICO action.

II
The Second Circuit Has Rendered A Decision On An Important Issue of Federal Law Which Conflicts With The Decisions Of This Court And Of Other Courts of Appeals

Both the government and NYSA attempt to denigrate the significance of the Second Circuit's decision by claiming that it is merely one more application of established principles in harmonizing conflicting federal laws. *See* Govt. Br. at 9-12, NYSA Br. at 11-14. Both urge a myopic view which would limit inquiry to whether this Court or any circuit court has ever held that the Norris-LaGuardia Act ("NLGA") can not be accommodated to the Racketeer Influenced and Corrupt Organizations Act ("RICO"). This misses the point.

The Second Circuit decision does not conflict with other decisions on minutiae or details. The conflict lies with three well-established principles. First, the NLGA may not be accommodated to non-labor statutes. *See* Petition at 16-22. Neither respondent comes to grips with the issue. The government merely dismisses these holdings as not involving RICO. *See* Govt. Br. at 11-12.[3] However, these holdings do limit accommodation of the NLGA to labor statutes, a class into which RICO does not fall. The Second Circuit's decision going outside the class necessarily conflicts with the other precedent.

NYSA claims that there is a "wealth of authority" subordinating the NLGA to other non-labor enactments. *See* NYSA Br. at 13.

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[3] It would seem that even this argument is on shaky ground. In a decision rendered after the filing of the petition in this case, the Eighth Circuit has held that RICO is preempted by the National Labor Relations Act. *Brennan v. Chestnut*, 1992 WL 200284 (8th Cir. August 21, 1992). *See also Butchers' Union, Local 498 v. SDC Investment, Inc.*, 631 F.Supp. 1001 (E.D. Cal. 1986). Two days before the government filed its brief in this case this Court summarily vacated a holding of the Second Circuit that RICO was not preempted by the NLRA. *See Yellow Freight System, Inc. v. United States*, 1992 WL 127139, 60 U.S.L.W. 3843 (U.S. Oct. 5, 1992). Although the Court directed that *Yellow Freight* be dismissed as moot, it seemed to go out of its way to vacate the Second Circuit's decision, since the same result could have been accomplished by a simple denial of certiorari.

But the cases NYSA cites all arise under the shipping laws and anti-trust laws, where there is a labor exemption. Once that threshold barrier is overcome and it is held that the labor exemption does not preclude the litigation, it is clear that the case is not truly a "labor dispute" so that the NLGA does not apply. Moreover, NYSA's chief authority is not even a court but only the Federal Maritime Commission, and the Commission's statement quoted by NYSA is mere *ipse dixit* without any citation of authority.[4] True, the FMC was upheld on review by the District of Columbia Circuit, but nowhere does the court of appeals in its 35 page decision mention the NLGA much less support the FMC's restrictive view.

The District of Columbia Circuit's opinion is instructive, however, with respect to the second principle violated by the Second Circuit. The District of Columbia Circuit notes that in harmonizing federal statutes, there must be a real, not a false, conflict between them before one can be made to give way. A false conflict exists where violation of one statute is not really required by the other. *See New York Shipping Ass'n*, 854 F.2d at 1367-8.[5]

The Second Circuit's error was to rely upon a false conflict. The Court of Appeals found an antagonism between the NLGA and RICO where none exists. Nothing in RICO requires NYSA to buy its way out of the lawsuit by giving up its employees' rights. Nothing requires the district court to grant the particular relief embodied in the proposed consent decree. None of the acts qualifying an

[4] *See 50 Mile Container Rules*, 21 Shp'g Reg. Rep. (P&F), 544, at 559 (FMC 1982), *pet. for review denied sub nom, New York Shipping Ass'n v. FMC*, 854 F.2d 1338 (D.C. Cir. 1988), *cert. denied*, 488 U.S. 1041 (1989).

[5] This principle is embodied in quotes from this Court's opinions by both respondents, who then quickly disregard it. The government says

> ". . . the Norris-LaGuardia Act does not apply to labor disputes "in limited situations where *necessary* to accommodate the Act to specific federal legislation or paramount congressional policy." *Jacksonville Bulk Terminals*, 457 U.S. at 707-708.

Govt. Br. at 10 (*emphasis supplied*). NYSA says

> The NLGA is no stranger to the process of statutory reconciliation. "The prohibition of the NLGA must give way when *necessary* to enforce a *duty specifically imposed* by another statute." *Pittsburgh & Lake Erie R.R. v. Railway Labor Executives' Ass'n*, 491 U.S. 490, 514 (1989).

NYSA Br. at 13-14 (*emphasis supplied*).

employee for the blacklist is a RICO violation. No duty specifically imposed by RICO is involved. The party to the proposed consent decree, NYSA, is not alleged to have violated RICO; it is only in the case to permit the government to get relief it might otherwise lack. The arbitration award sought by the unions would not limit or impinge upon the jurisdiction of the district court, only upon NYSA's power to consent to relief that violates its contractual obligations. There is, then, no basis for harmonization. The Second Circuit, in defiance of all previous authority, has expanded accommodation to apply where it is not required by the competing statute but is only a tool sought by the government to achieve some general statutory purpose.[6]

The third principle which the court of appeals violates is the strong public policy in labor law favoring arbitration. The government, in addition to mistakenly raising the Local 1814 Consent Decree, claims that the policy favoring arbitration is of little concern here because arbitration is not itemized as a protected activity in § 4 of the NLGA. *See* Govt. Br. at 10, n. 14. However, as two courts of appeals have pointed out, the omission of arbitration in § 4 is because § 8 of the NLGA positively *requires* resort to arbitration before any injunctive relief can be granted. Therefore, there was no reason for Congress to cross-reference this requirement in § 4. *Camping Construction Co. v. District Council of Iron Workers,* 915 F.2d 1333, 1345-46 (9th Cir. 1990), *cert. denied*, 111 S.Ct. 1684 (1991); *In re District No. 1—Pacific Coast Dist. Marine Eng'rs' Beneficial Ass'n,* 723 F.2d 70, 74-75 at n. 2, 81 (D.C. Cir. 1983).[7]

NYSA, in all wide-eyed innocence, claims that it is doing no more in the consent decree than agreeing to obey a court order, which it is bound to do anyway, and that, therefore, there is no ripe

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[6] The government claims this is but an exception to the NLGA. *See* Govt. Br. at 11. This merely reenforces petitioner's argument that any new exception should be reviewed by this Court. *See* Petition at 22-23.

[7] This Court has held that neither § 1 nor § 8 is in any way modified by § 4. *See, e.g., Brotherhood of Railroad Trainmen, Enterprise Lodge, No. 27 v. Toledo, Peoria & Western Railroad*, 321 U.S. 50 (1944) (holding that an employer who refuses to submit a dispute to arbitration has not made "every reasonable effort" to settle the dispute, within the meaning of § 8 of the Norris-LaGuardia Act, and is therefore barred from injunctive relief in the federal courts).

labor dispute or arbitrable question until such time as the consent decree is in place and enforced in a specific instance. *See* NYSA Br. at 15-18. This argument overlooks the obvious fact that, quite apart from the district court's power to grant relief absent a consent decree, it is a matter of history that it is NYSA in its agreement with the government that is suggesting, urging, inspiring the court to grant the relief. It is this affirmative conduct that the unions claim breach their collective bargaining agreement and must be arbitrated. Neither the United States Attorney below, the district court, nor the Second Circuit bought NYSA's "unripeness" canard. NYSA's hope that this Court will be more gullible is mere wishful thinking.

Finally, both respondents seek to minimize another factor that calls for review by this Court — the adoption by the courts below of an "end justifies the means" approach to get at organized crime, a crushing of all other principles of law under the RICO juggernaut. While pooh-poohing this aspect of the case, *see* Govt. Br. at 13-14, the government opens its brief with an attempt to poison the well by citing stale reports as to the connection between organized crime and the New York-New Jersey Waterfront, — reports based on information outside the record in the case and compiled without the protection of the rules of evidence. Whatever probative value they may have, the government's resort to these reports is a transparent pitch to this Court to put on the white hats, go after the bad guys, and wink at the abuses of the lower courts in the interest of the higher purpose of fighting crime.

Petitioner does not bring this case for the benefit of the few of its members that might have organized crime connections but for all the honest longshoremen in the port whose collectively bargained rights are in jeopardy. It is to oppose the principle adopted by the government and the lower courts, that settled rules of law can be jettisoned when the object is to root out crime. This attitude does not harm only the criminals but sacrifices all citizens who have the right to expect that federal judges, of all people, will uphold the law. The equal application of justice even to those who may not deserve it is the shield of everyone. When exceptions can be made because of

some perceived virtue in a particular case, the rights of all are diminished. NYSA and society at large would do well to continue reading to the end the John Donne poem NYSA quotes to this Court at pages 12 of its brief:

> . . . never send to know for whom the bell tolls;
> It tolls for thee.

CONCLUSION

The petition for a writ of certiorari should be granted.

Dated: New York, New York
October 14, 1992

Respectfully submitted,

THOMAS W. GLEASON
26 Broadway, 17th Floor
New York, New York 10004
(212) 425-3240

Attorney for Petitioner

Of Counsel:

Ernest L. Mathews, Jr.